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REVISED STATUTES

OF

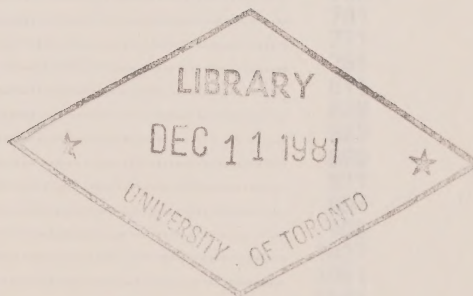
ONTARIO, 1980

LAWS, STATUTES, ETC.
1/2

BEING A

REVISION AND CONSOLIDATION OF THE PUBLIC GENERAL
ACTS OF THE LEGISLATURE OF ONTARIO, PUBLISHED
UNDER THE AUTHORITY OF THE STATUTES
REVISION ACT, 1979

VOL. 4



TORONTO
PRINTED AND PUBLISHED BY THE QUEEN'S PRINTER

REVISED STATUTES OF ONTARIO, 1980

VOLUME 4

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CHAPTER 228

Labour Relations Act

WHEREAS it is in the public interest of the Province of ^{Preamble} Ontario to further harmonious relations between employers and employees by encouraging the practice and procedure of collective bargaining between employers and trade unions as the freely designated representatives of employees.

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpre-
tation

- (a) “accredited employers’ organization” means an organization of employers that is accredited under this Act as the bargaining agent for a unit of employers;
- (b) “bargaining unit” means a unit of employees appropriate for collective bargaining, whether it is an employer unit or a plant unit or a subdivision of either of them;
- (c) “Board” means the Ontario Labour Relations Board;
- (d) “certified council of trade unions” means a council of trade unions that is certified under this Act as the bargaining agent for a bargaining unit of employees of an employer;
- (e) “collective agreement” means an agreement in writing between an employer or an employers’ organization, on the one hand, and a trade union that, or a council of trade unions that, represents employees of the employer or employees of members of the employers’ organization, on the other hand, containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, the employers’ organization, the trade union or the employees, and includes a provincial agreement;

- (f) "construction industry" means the businesses that are engaged in constructing, altering, decorating, repairing or demolishing buildings, structures, roads, sewers, water or gas mains, pipe lines, tunnels, bridges, canals or other works at the site thereof;
- (g) "council of trade unions" includes an allied council, a trades council, a joint board and any other association of trade unions;
- (h) "dependent contractor" means a person, whether or not employed under a contract of employment, and whether or not furnishing his own tools, vehicles, equipment, machinery, material, or any other thing, who performs work or services for another person for compensation or reward on such terms and conditions that he is in a position of economic dependence upon, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor;
- (i) "employee" includes a dependent contractor;
- (j) "employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees and includes an accredited employers' organization and a designated or accredited employer bargaining agency;
- (k) "lock-out" includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of his employees, with a view to compel or induce his employees, or to aid another employer to compel or induce his employees, to refrain from exercising any rights or privileges under this Act or to agree to provisions or changes in provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, an employers' organization, the trade union, or the employees;
- (l) "member", when used with reference to a trade union, includes a person who,
 - (i) has applied for membership in the trade union, and
 - (ii) has paid to the trade union on his own behalf an amount of at least \$1 in respect of

initiation fees or monthly dues of the trade union,

and "membership" has a corresponding meaning;

- (m) "Minister" means the Minister of Labour;
- (n) "professional engineer" means an employee who is a member of the engineering profession entitled to practise in Ontario and employed in a professional capacity;
- (o) "strike" includes a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees designed to restrict or limit output;
- (p) "trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers and includes a provincial, national, or international trade union, a certified council of trade unions and a designated or certified employee bargaining agency. R.S.O. 1970, c. 232, s. 1 (1); 1975, c. 76, s. 1 (1); 1977, c. 31, s. 1.

(2) For the purposes of this Act, no person shall be deemed ^{Idem} to have ceased to be an employee by reason only of his ceasing to work for his employer as the result of a lock-out or strike or by reason only of his being dismissed by his employer contrary to this Act or to a collective agreement.

(3) Subject to section 90, for the purposes of this Act, no ^{Idem} person shall be deemed to be an employee,

- (a) who is a member of the architectural, dental, land surveying, legal or medical profession entitled to practise in Ontario and employed in a professional capacity; or
- (b) who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations. R.S.O. 1970, c. 232, s. 1 (2, 3).

(4) Where, in the opinion of the Board, associated or ^{Idem} related activities or businesses are carried on, whether or not simultaneously, by or through more than one corporation, individual, firm, syndicate or association or any combination thereof, under common control or direction, the Board

may, upon the application of any person, trade union or council of trade unions concerned, treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act and grant such relief, by way of declaration or otherwise, as it may deem appropriate.

Duty of
respondents

(5) Where, in an application made pursuant to subsection (4), it is alleged that more than one corporation, individual, firm, syndicate or association or any combination thereof are or were under common control or direction, the respondents to the application shall adduce at the hearing all facts within their knowledge that are material to the allegation. 1975, c. 76, s. 1 (2).

APPLICATION OF ACT

Where Act
not to apply

2. This Act does not apply,

- (a) to a domestic employed in a private home;
- (b) to a person employed in agriculture, hunting or trapping;
- (c) to a person, other than an employee of a municipality or a person employed in silvaculture, who is employed in horticulture by an employer whose primary business is agriculture or horticulture;
- (d) to a member of a police force within the meaning of the *Police Act*;
- (e) to a full-time fire fighter within the meaning of the *Fire Departments Act*; or
- (f) to a teacher as defined in the *School Boards and Teachers Collective Negotiations Act*, except as provided in that Act. R.S.O. 1970, c. 232, s. 2; 1975, c. 76, s. 2.

R.S.O. 1980,
c. 381

R.S.O. 1980,
c. 164

R.S.O. 1980,
c. 464

FREEDOMS

Membership
in trade
union

3. Every person is free to join a trade union of his own choice and to participate in its lawful activities. R.S.O. 1970, c. 232, s. 3.

Membership
in
employers'
organization

4. Every person is free to join an employers' organization of his own choice and to participate in its lawful activities. R.S.O. 1970, c. 232, s. 4.

ESTABLISHMENT OF BARGAINING RIGHTS BY
CERTIFICATION

5.—(1) Where no trade union has been certified as bargaining agent of the employees of an employer in a unit that a trade union claims to be appropriate for collective bargaining and the employees in the unit are not bound by a collective agreement, a trade union may, subject to section 61, apply at any time to the Board for certification as bargaining agent of the employees in the unit. ^{Application for certification}

(2) Where a trade union has been certified as bargaining agent of the employees of an employer in a bargaining unit and has not entered into a collective agreement with the employer and no declaration has been made by the Board that the trade union no longer represents the employees in the bargaining unit, another trade union may, subject to section 61, apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit determined in the certificate only after the expiration of one year from the date of the certificate. ^{Idem}

(3) Where an employer and a trade union agree that the employer recognizes the trade union as the exclusive bargaining agent of the employees in a defined bargaining unit and the agreement is in writing signed by the parties and the parties have not entered into a collective agreement and the Board has not made a declaration under section 60, another trade union may, subject to section 61, apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the recognition agreement only after the expiration of one year from the date that the recognition agreement was entered into. ^{Idem}

(4) Where a collective agreement is for a term of not more than three years, a trade union may, subject to section 61, apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the commencement of the last two months of its operation. ^{Idem}

(5) Where a collective agreement is for a term of more than three years, a trade union may, subject to section 61, apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement only after the commencement of the thirty-fifth month of its operation and before the commencement of the thirty-seventh month of its operation and during the two-month period immediately preceding the end of each year that the agreement continues to operate thereafter or after ^{Idem}

the commencement of the last two months of its operation, as the case may be.

Idem

(6) Where a collective agreement referred to in subsection (4) or (5) provides that it will continue to operate for a further term or successive terms if either party fails to give to the other notice of termination or of its desire to bargain with a view to the renewal, with or without modifications, of the agreement or to the making of a new agreement, a trade union may, subject to section 61, apply to the Board for certification as bargaining agent of any of the employees in the bargaining unit defined in the agreement during the further term or successive terms only during the last two months of each year that it so continues to operate, or after the commencement of the last two months of its operation, as the case may be. R.S.O. 1970, c. 232, s. 5.

Board to determine appropriateness of units

6.—(1) Subject to subsection (2), upon an application for certification, the Board shall determine the unit of employees that is appropriate for collective bargaining, but in every case the unit shall consist of more than one employee and the Board may, before determining the unit, conduct a vote of any of the employees of the employer for the purpose of ascertaining the wishes of the employees as to the appropriateness of the unit. R.S.O. 1970, c. 232, s. 6 (1); 1975, c. 76, s. 3 (1).

Certification pending resolution of composition of bargaining unit

(2) Where, upon an application for certification, the Board is satisfied that any dispute as to the composition of the bargaining unit cannot affect the trade union's right to certification, the Board may certify the trade union as the bargaining agent pending the final resolution of the composition of the bargaining unit. 1975, c. 76, s. 3 (2).

Crafts units

(3) Any group of employees who exercise technical skills or who are members of a craft by reason of which they are distinguishable from the other employees and commonly bargain separately and apart from other employees through a trade union that according to established trade union practice pertains to such skills or crafts shall be deemed by the Board to be a unit appropriate for collective bargaining if the application is made by a trade union pertaining to such skills or craft, and the Board may include in such unit persons who according to established trade union practice are commonly associated in their work and bargaining with such group, but the Board shall not be required to apply this subsection where the group of employees is included in a bargaining unit represented by another bargaining agent at the time the application is made. 1975, c. 76, s. 3 (3).

(4) A bargaining unit consisting solely of professional engineers shall be deemed by the Board to be a unit of employees appropriate for collective bargaining, but, the Board may include professional engineers in a bargaining unit with other employees if the Board is satisfied that a majority of such professional engineers wish to be included in such bargaining unit. R.S.O. 1970, c. 232, s. 6 (3). Unit of professional engineers

(5) A bargaining unit consisting solely of dependent contractors shall be deemed by the Board to be a unit of employees appropriate for collective bargaining but the Board may include dependent contractors in a bargaining unit with other employees if the Board is satisfied that a majority of such dependent contractors wish to be included in such bargaining unit. 1975, c. 76, s. 3 (4). Dependent contractors

7.—(1) Upon an application for certification, the Board shall ascertain the number of employees in the bargaining unit at the time the application was made and the number of employees in the unit who were members of the trade union at such time as is determined under clause 103 (2) (j). R.S.O. 1970, c. 232, s. 7 (1). Determination of members in bargaining unit

(2) If the Board is satisfied that not less than 45 per cent and not more than 55 per cent of the employees in the bargaining unit are members of the trade union, the Board shall, and if the Board is satisfied that more than 55 per cent of such employees are members of the trade union, the Board may direct that a representation vote be taken. R.S.O. 1970, c. 232, s. 7 (2); 1975, c. 76, s. 4 (1). Representation vote

(3) If on the taking of a representation vote more than 50 per cent of the ballots cast are cast in favour of the trade union, and in other cases, if the Board is satisfied that more than 55 per cent of the employees in the bargaining unit are members of the trade union, the Board shall certify the trade union as the bargaining agent of the employees in the bargaining unit. R.S.O. 1970, c. 232, s. 7 (3); 1975, c. 76, s. 4 (2). Certification after vote

8. Where an employer or employers' organization contravenes this Act so that the true wishes of the employees of the employer or of a member of the employers' organization are not likely to be ascertained, and, in the opinion of the Board, a trade union has membership support adequate for the purposes of collective bargaining in a bargaining unit found by the Board pursuant to section 6 to be appropriate for collective bargaining, the Board may, on Certification where Act contravened

the application of the trade union, certify the trade union as the bargaining agent of the employees in the bargaining unit. 1975, c. 76, s. 5.

Pre-hearing
votes

9.—(1) Upon an application for certification, the trade union may request that a pre-hearing representation vote be taken.

Voting
constituency

(2) Upon such a request being made, the Board may determine a voting constituency and, if it appears to the Board on an examination of the records of the trade union and the records of the employer that not less than 35 per cent of the employees in the voting constituency were members of the trade union at the time the application was made, the Board may direct that a representation vote be taken among the employees in the voting constituency.

Sealing of
ballot box

(3) The Board may direct that the ballot box containing the ballots cast in a representation vote taken under subsection (2) shall be sealed and that the ballots shall not be counted until the parties have been given full opportunity to present their evidence and make their submissions.

Effect of
pre-hearing
vote

(4) After a representation vote has been taken under subsection (2), the Board shall determine the unit of employees that is appropriate for collective bargaining and, if it is satisfied that not less than 35 per cent of the employees in such bargaining unit were members of the trade union at the time the application was made, the representation vote taken under subsection (2) has the same effect as a representation vote taken under subsection 7 (2). R.S.O. 1970, c. 232, s. 8.

Certification
of councils
of trade
unions

10.—(1) Sections 5 to 13 and 117 and 119 apply with necessary modifications to an application for certification by a council of trade unions, but, before the Board certifies such a council as bargaining agent for the employees of an employer in a bargaining unit, the Board shall satisfy itself that each of the trade unions that is a constituent union of the council has vested appropriate authority in the council to enable it to discharge the responsibilities of a bargaining agent.

Postpone-
ment of
disposition

(2) Where the Board is of opinion that appropriate authority has not been vested in the applicant, the Board may postpone disposition of the application to enable the constituent unions to vest such additional or other authority as the Board considers necessary.

Membership

(3) For the purposes of sections 7 and 9, a person who is a member of any constituent trade union of a council shall be

deemed by the Board to be a member of the council.
R.S.O. 1970, c. 232, s. 9.

11. Where employees of an employer reside on the property of the employer, or on property to which the employer has the right to control access, the employer shall, upon a direction from the Board, allow the representative of a trade union access to the property on which the employees reside for the purpose of attempting to persuade the employees to join a trade union. R.S.O. 1970, c. 232, s. 10.

12. The Board shall not include in a bargaining unit with other employees a person employed as a guard to protect the property of an employer, and no trade union shall be certified as bargaining agent for a bargaining unit of such guards and no employer or employers' organization shall be required to bargain with a trade union on behalf of any person who is a guard if, in either case, the trade union admits to membership or is chartered by, or is affiliated, directly or indirectly, with an organization that admits to membership persons other than guards. R.S.O. 1970, c. 232, s. 11.

13. The Board shall not certify a trade union if any employer or any employers' organization has participated in its formation or administration or has contributed financial or other support to it or if it discriminates against any person because of his race, creed, colour, nationality, ancestry, age, sex or place of origin. R.S.O. 1970, c. 232, s. 12; 1975, c. 76, s. 6.

NEGOTIATION OF COLLECTIVE AGREEMENTS

14. Following certification, the trade union shall give the employer written notice of its desire to bargain with a view to making a collective agreement. R.S.O. 1970, c. 232, s. 13.

15. The parties shall meet within fifteen days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement. R.S.O. 1970, c. 232, s. 14.

16.—(1) Where notice has been given under section 14 or 53, the Minister, upon the request of either party, shall appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.

Idem, where
no notice
given

(2) Notwithstanding the failure of a trade union to give written notice under section 14 or the failure of either party to give written notice under sections 53 and 122, where the parties have met and bargained, the Minister, upon the request of either party, may appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.

Idem,
voluntary
recognition

(3) Where an employer and a trade union agree that the employer recognizes the trade union as the exclusive bargaining agent of the employees in a defined bargaining unit and the agreement is in writing signed by the parties, the Minister may, upon the request of either party, appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement.

Second
conciliation

(4) Notwithstanding anything in this Act, where the Minister has appointed a conciliation officer or a mediator and the parties have failed to enter into a collective agreement within fifteen months from the date of such appointment, the Minister may, upon the joint request of the parties, again appoint a conciliation officer to confer with the parties and endeavour to effect a collective agreement, and, upon such appointment being made, sections 17 to 34 and 72 to 79 apply, but such appointment is not a bar to an application for certification or for a declaration that the trade union no longer represents the employees in the bargaining unit. R.S.O. 1970, c. 232, s. 15.

Appoint-
ment of
mediator

17.—(1) Where the Minister is required or authorized to appoint a conciliation officer, the Minister may, on the request in writing of the parties, appoint a mediator selected by them jointly before he has appointed a conciliation board or has informed the parties that he does not consider it advisable to appoint a conciliation board.

Idem

(2) Where the Minister has appointed a mediator after a conciliation officer has been appointed, the appointment of the conciliation officer is thereby terminated. R.S.O. 1970, c. 232, s. 16.

Duties

18.—(1) Where a conciliation officer is appointed, he shall confer with the parties and endeavour to effect a collective agreement and he shall, within fourteen days from his appointment, report the result of his endeavour to the Minister.

Extension
of 14-day
period

(2) The period mentioned in subsection (1) may be extended by agreement of the parties or by the Minister upon the

advice of the conciliation officer that a collective agreement may be made within a reasonable time if the period is extended.

(3) Where the conciliation officer reports to the Minister that the differences between the parties concerning the terms of a collective agreement have been settled, the Minister shall forthwith by notice in writing inform the parties of the report. R.S.O. 1970, c. 232, s. 17. Report of settlement

19. If the conciliation officer is unable to effect a collective agreement within the time allowed under section 18, Conciliation board, appointment of members

(a) the Minister shall forthwith by notice in writing request each of the parties, within five days of the receipt of the notice, to recommend one person to be a member of a conciliation board, and upon the receipt of the recommendations or upon the expiration of the five-day period he shall appoint two members who in his opinion represent the points of view of the respective parties, and the two members so appointed may, within three days after they are appointed, jointly recommend a third person to be a member and chairman of the board, and upon the receipt of the recommendation or upon the expiration of the three-day period, he shall appoint a third person to be a member and chairman of the board; or

(b) the Minister shall forthwith by notice in writing inform each of the parties that he does not consider it advisable to appoint a conciliation board. R.S.O. 1970, c. 232, s. 18.

20. No person shall act as a member of a conciliation board who has any pecuniary interest in the matters coming before it or who is acting, or has, within a period of six months preceding the date of his appointment, acted as solicitor, counsel or agent of either of the parties. R.S.O. 1970, c. 232, s. 19. Certain persons prohibited as members

21.—(1) When the members of the conciliation board have been appointed, the Minister shall forthwith give notice of their names to the parties and thereupon the board shall be deemed to have been established. Notice to parties of appointment

(2) When notice under subsection (1) has been given, it shall be presumed conclusively that the conciliation board has been established in accordance with this Act, and no order shall be made or process entered or proceedings taken in any Presumption of establishment

court, whether by way of injunction, declaratory judgment, certiorari, mandamus, prohibition, quo warranto, or otherwise, to question the establishment of the conciliation board or the appointment of any of its members, or to review, prohibit or restrain any of its proceedings. R.S.O. 1970, c. 232, s. 20.

Vacancies

22.—(1) If a person ceases to be a member of a conciliation board by reason of his resignation or death before it has completed its work, the Minister shall appoint a member in his place after consulting the party whose point of view was represented by such person.

Appoint-
ment of
new member
in place
of member

(2) If in the opinion of the Minister a member of a conciliation board has failed to enter on his duties so as to enable it to report to the Minister within a reasonable time after its appointment, the Minister may appoint a member in his place after consulting the party whose point of view was represented by such person.

Appoint-
ment of
new
chairman

(3) If the chairman of a conciliation board is unable to enter on his duties so as to enable it to report to the Minister within a reasonable time after its appointment, he shall advise the Minister of his inability and the Minister may appoint a person to act as chairman in his place. R.S.O. 1970, c. 232, s. 21.

Terms of
reference

23. As soon as a conciliation board has been established, the Minister shall deliver to its chairman a statement of the matters referred to it and the Minister may, either before or after its report is made, amend or add to the statement. R.S.O. 1970, c. 232, s. 22.

Oath of
Office

24. Each member of a conciliation board shall, before entering upon his duties, take and subscribe before a person authorized to administer oaths or before another member of the board, and file with the Minister, an oath in the following form:

I do solemnly swear that I am not disqualified under section 20 of the *Labour Relations Act* from acting as a member of a conciliation board and that I will faithfully, truly and impartially, to the best of my knowledge, skill and ability, execute and perform the office of member (*or* chairman) of the conciliation board established to
and that I will not, except as I am legally authorized, disclose to any person any of the evidence or other matter brought before the board. So help me God.

R.S.O. 1970, c. 232, s. 23.

25. As soon as a conciliation board is established, it shall ^{Duties} endeavour to effect agreement between the parties on the matters referred to it. R.S.O. 1970, c. 232, s. 24.

26.—(1) Subject to this Act, a conciliation board shall ^{Procedure} determine its own procedure.

(2) A conciliation board shall give full opportunity to the parties to present their evidence and make their submissions. ^{Presentation of evidence}
R.S.O. 1970, c. 232, s. 25.

27. The chairman of a conciliation board shall, after ^{Sittings} consultation with the other members of the board, fix the time and place of its sittings, and he shall notify the parties and the other members of the board of the time and place so fixed. R.S.O. 1970, c. 232, s. 26.

28. The chairman of a conciliation board shall in writing, ^{Minister to be informed of first sitting} immediately upon the conclusion of its first sitting, inform the Minister of the date on which the sitting was held. R.S.O. 1970, c. 232, s. 27.

29. The chairman and one other member of a conciliation ^{Quorum} board or, in the absence of the chairman and with his written consent, the other two members constitute a quorum, but, in the absence of one of the members other than the chairman, the other members shall not proceed unless the absent member has been given reasonable notice of the sitting. R.S.O. 1970, c. 232, s. 28.

30. If the members of a conciliation board are unable to ^{Casting vote} agree among themselves on matters of procedure or as to the admissibility of evidence, the decision of the chairman governs. R.S.O. 1970, c. 232, s. 29.

31. A conciliation board has power, ^{Powers}

- (a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce such documents and things as the board considers requisite to the full investigation and consideration of the matters referred to it in the same manner as a court of record in civil cases;
- (b) to administer oaths;
- (c) to accept such oral or written evidence as it in its discretion considers proper, whether admissible in a court of law or not;

(d) to enter any premises where work is being done or has been done by the employees or in which the employer carries on business or where anything is taking place or has taken place concerning any of the matters referred to the board, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any such thing or any of such matters;

(e) to authorize any person to do anything that the board may do under clause (d) and to report to the board thereon. R.S.O. 1970, c. 232, s. 30.

When
report to
be made

32.—(1) A conciliation board shall report its findings and recommendations to the Minister within thirty days after its first sitting.

Extension
of period

(2) The period mentioned in subsection (1) may be extended,

(a) for a further period not exceeding thirty days,

(i) by the Minister at the request of the chairman of the conciliation board, or

(ii) by agreement of the parties; or

(b) for such further period beyond the period fixed in clause (a) as the parties may agree upon and as the Minister may approve.

Report

(3) The report of the majority constitutes the report of the conciliation board, but, where there is no majority agreement or where the board is unable to report within the time allowed under subsection (1) or (2), the chairman shall notify the Minister in writing that there has been no agreement or that the board is unable to report, as the case may be, and in either of such cases the notification constitutes the report of the board.

Clarification,
etc., of
report

(4) After a conciliation board has made its report, the Minister may direct it to clarify or amplify any part of its report, and the report shall not be deemed to have been received by the Minister until it has been so clarified or amplified.

Copies of
reports to
parties

(5) On receipt of the report of the conciliation board or the mediator, the Minister shall forthwith release a copy thereof to each of the parties. R.S.O. 1970, c. 232, s. 31.

33.—(1) Where a mediator is appointed, he shall confer with the parties and endeavour to effect a collective agreement. Duty of mediator

(2) A mediator has all the powers of a conciliation board under section 31. Powers

(3) Sections 28 and 32 apply with necessary modifications to a mediator. Sections 28 and 32 apply

(4) The report of a mediator has the same effect as the report of a conciliation board. R.S.O. 1970, c. 232, s. 32. Report

34. Failure of a conciliation officer to report to the Minister within the time provided in this Act does not invalidate the proceedings of the conciliation officer. R.S.O. 1970, c. 232, s. 33. Failure to report

35.—(1) The Minister may establish an industrial inquiry commission to inquire into and report to the Minister on any industrial matter or dispute that the Minister considers advisable. Industrial inquiry commission

(2) The industrial inquiry commission shall consist of one or more members appointed by the Minister and the commission shall have all the powers of a conciliation board under section 31. Composition and powers

(3) The chairman and members of the commission shall be paid remuneration and expenses at the same rate as is payable to a chairman and members of a conciliation board under this Act. R.S.O. 1970, c. 232, s. 34. Remuneration and expenses

36.—(1) Where, at any time during the operation of a collective agreement, the Minister considers that it will promote more harmonious industrial relations between the parties, he may appoint a special officer to confer with the parties and assist them in an examination and discussion of their current relationship or the resolution of anticipated bargaining problems. Appointment of special officer

(2) A special officer appointed under subsection (1) shall confer with the parties and shall report to the Minister within thirty days of his appointment and upon the filing of his report his appointment shall terminate unless it is extended by the Minister. Duties of special officer

(3) Any person knowledgeable in industrial relations may be appointed a special officer, whether or not he is an employee of the Crown. 1975, c. 76, s. 7, *part.* Qualifications of special officer

Disputes
Advisory
Committee

37.—(1) The Minister may appoint a Disputes Advisory Committee composed of one or more representatives of employers and one or more representatives of employees.

Purpose of
Committee

(2) At any time during the course of bargaining, either before or after the commencement of a strike or lock-out, where it appears to the Minister that the normal conciliation and mediation procedures have been exhausted, the Minister may request that the Disputes Advisory Committee be convened to confer with, advise and assist the bargaining parties. 1975, c. 76, s. 7, *part*.

Voluntary
arbitration

38.—(1) Notwithstanding any other provision of this Act, the parties may at any time following the giving of notice of desire to bargain under section 14 or 53, irrevocably agree in writing to refer all matters remaining in dispute between them to an arbitrator or a board of arbitration for final and binding determination.

Powers of
arbitrator
or board of
arbitration

(2) The agreement to arbitrate shall supersede all other dispute settlement provisions of this Act, including those provisions relating to conciliation, mediation, strike and lock-out, and the provisions of subsections 44 (7), (8), (10), (11) and (12) apply with necessary modifications to the proceedings before the arbitrator or board of arbitration and to its decision under this section.

Effect of
agreement

(3) For the purposes of section 61 and section 123, an irrevocable agreement in writing referred to in subsection (1) shall have the same effect as a collective agreement. 1975, c. 76, s. 7, *part*.

Where
Minister
may require
ratification
vote

39. Where, at any time after the commencement of a strike or lock-out, the Minister is of the opinion that it is in the public interest that the employees in the affected bargaining unit be given the opportunity to accept or reject the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties, the Minister may, on such terms as he considers necessary, direct that a vote of the employees in the bargaining unit to accept or reject the offer be held forthwith. 1975, c. 76, s. 7, *part*.

Vote on
employer's
offer

40.—(1) Before or after the commencement of a strike or lock-out, the employer of the employees in the affected bargaining unit may request that a vote of such employees be taken as to the acceptance or rejection of the offer of the employer last received by the trade union in respect of all matters remaining in dispute between the parties and the Minister shall, and in the construction industry the Minister may, on such terms as he considers necessary direct that a vote of such employees to accept or reject the offer be held and thereafter no further such request shall be made.

(2) A request for the taking of a vote, or the holding of a vote, under subsection (1) does not abridge or extend any time limits or periods provided for in this Act. 1980, c. 34, s. 1.

Time limits
and periods
not affected

CONTENTS OF COLLECTIVE AGREEMENTS

41.—(1) Every collective agreement shall be deemed to provide that the trade union that is a party thereto is recognized as the exclusive bargaining agent of the employees in the bargaining unit defined therein. R.S.O. 1970, c. 232, s. 35 (1); 1975, c. 76, s. 8 (1).

Recognition
provision

(2) Every collective agreement to which an accredited employers' organization is a party shall be deemed to provide that the accredited employers' organization is recognized as the exclusive bargaining agent of the employers in the unit of employers for whom the employers' organization has been accredited. R.S.O. 1970, c. 232, s. 35 (2); 1975, c. 76, s. 8 (2).

Recognition
of accredited
employers'
organization

42.—(1) Every collective agreement shall provide that there will be no strikes or lock-outs so long as the agreement continues to operate.

Provision
against
strikes and
lock-outs

(2) If a collective agreement does not contain such a provision as is mentioned in subsection (1), it shall be deemed to contain the following provision:

Statutory
provision

"There shall be no strikes or lock-outs so long as this agreement continues to operate."

R.S.O. 1970, c. 232, s. 36.

43.—(1) Except in the construction industry and subject to section 47, where a trade union that is the bargaining agent for employees in a bargaining unit so requests, there shall be included in the collective agreement between the trade union and the employer of the employees a provision requiring the employer to deduct from the wages of each employee in the unit affected by the collective agreement, whether or not the employee is a member of the union, the amount of the regular union dues and to remit the amount to the trade union, forthwith. 1980, c. 34, s. 2 (1).

Deduction
and
remittance
of union
dues

(2) In subsection (1), "regular union dues" means,

Interpre-
tation

(a) in the case of an employee who is a member of the trade union, the dues uniformly and regularly paid by a member of the trade union in accordance with the constitution and by-laws of the trade union; and

(b) in the case of an employee who is not a member of the trade union, the dues referred to in clause (a),

excluding any amount in respect of pension, superannuation, sickness insurance or any other benefit available only to members of the trade union. 1975, c. 76, s. 9, *part*.

Arbitration
provision

44.—(1) Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.

Idem

(2) If a collective agreement does not contain such a provision as is mentioned in subsection (1), it shall be deemed to contain the following provision:

Where a difference arises between the parties relating to the interpretation, application or administration of this agreement, including any question as to whether a matter is arbitrable, or where an allegation is made that this agreement has been violated, either of the parties may, after exhausting any grievance procedure established by this agreement, notify the other party in writing of its desire to submit the difference or allegation to arbitration and the notice shall contain the name of the first party's appointee to an arbitration board. The recipient of the notice shall within five days inform the other party of the name of its appointee to the arbitration board. The two appointees so selected shall, within five days of the appointment of the second of them, appoint a third person who shall be the chairman. If the recipient of the notice fails to appoint an arbitrator, or if the two appointees fail to agree upon a chairman within the time limited, the appointment shall be made by the Minister of Labour for Ontario upon the request of either party. The arbitration board shall hear and determine the difference or allegation and shall issue a decision and the decision is final and binding upon the parties and upon any employee or employer affected by it. The decision of a majority is the decision of the arbitration board, but if there is no majority the decision of the chairman governs.

Where
arbitration
provision
inadequate

(3) If, in the opinion of the Board, any part of the arbitration provision, including the method of appointment of the arbitrator or arbitration board, is inadequate, or if the provision set out in subsection (2) is alleged by either party to be unsuitable, the Board may, on the request of either party, modify the provision so long as it conforms with subsection (1), but, until so modified, the arbitration provision in the collective agreement or in subsection (2), as the case may be, applies.

Appoint-
ment of
arbitrator
by Minister

(4) Notwithstanding subsection (3), if there is failure to appoint an arbitrator or to constitute a board of arbitration under a collective agreement, the Minister, upon the request of either party, may appoint the arbitrator or make such appointments as are necessary to constitute the board of arbitration, as the case may be, and any person so appointed

by the Minister shall be deemed to have been appointed in accordance with the collective agreement.

(5) Where the Minister has appointed an arbitrator or the chairman of a board of arbitration under subsection (4), each of the parties shall pay one-half the remuneration and expenses of the person appointed, and, where the Minister has appointed a member of a board of arbitration under subsection (4) on failure of one of the parties to make the appointment, that party shall pay the remuneration and expenses of the person appointed. R.S.O. 1970, c. 232, s. 37 (1-5). Payment of arbitrators

(6) Except where a collective agreement states that this subsection does not apply, an arbitrator or arbitration board may extend the time for the taking of any step in the grievance procedure under a collective agreement, notwithstanding the expiration of such time, where the arbitrator or arbitration board is satisfied that there are reasonable grounds for the extension and that the opposite party will not be substantially prejudiced by the extension. 1975, c. 76, s. 10. Extension of time

(7) Where a difference has been submitted to arbitration under this section and a party to the arbitration complains to the Minister that the arbitrator or the arbitration board, as the case may be, has failed to render a decision within a reasonable time, the Minister may, after consulting the parties and the arbitrator or the arbitration board, issue whatever order he considers necessary in the circumstances to ensure that a decision will be rendered in the matter without further undue delay. Where decision of arbitrator unduly delayed

(8) An arbitrator or the chairman of an arbitration board, as the case may be, has power, Powers of arbitrators, chairmen of arbitration boards, and arbitration boards

(a) to summon and enforce the attendance of witnesses and to compel them to give oral or written evidence on oath in the same manner as a court of record in civil cases; and

(b) to administer oaths,

and an arbitrator or an arbitration board, as the case may be, has power,

(c) to accept such oral or written evidence as the arbitrator or the arbitration board, as the case may be, in its discretion considers proper, whether admissible in a court of law or not;

(d) to enter any premises where work is being done or has been done by the employees or in which the

employer carries on business or where anything is taking place or has taken place concerning any of the differences submitted to him or it, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any such thing or any of such differences;

- (e) to authorize any person to do anything that the arbitrator or arbitration board may do under clause (d) and to report to the arbitrator or the arbitration board thereon.

Substitution
of penalty

(9) Where an arbitrator or arbitration board determines that an employee has been discharged or otherwise disciplined by an employer for cause and the collective agreement does not contain a specific penalty for the infraction that is the subject-matter of the arbitration, the arbitrator or arbitration board may substitute such other penalty for the discharge or discipline as to the arbitrator or arbitration board seems just and reasonable in all the circumstances.

Effect of
arbitrator's
decision

(10) The decision of an arbitrator or of an arbitration board is binding,

- (a) upon the parties; and
- (b) in the case of a collective agreement between a trade union and an employers' organization, upon the employers covered by the agreement who are affected by the decision; and
- (c) in the case of a collective agreement between a council of trade unions and an employer or an employers' organization, upon the members or affiliates of the council and the employer or the employers covered by the agreement, as the case may be, who are affected by the decision; and
- (d) upon the employees covered by the agreement who are affected by the decision,

and such parties, employers, trade unions and employees shall do or abstain from doing anything required of them by the decision.

Enforcement
of arbitration
decisions

(11) Where a party, employer, trade union or employee has failed to comply with any of the terms of the decision of an arbitrator or arbitration board, any party, employer, trade union or employee affected by the decision may, after the expiration of fourteen days from the date of the release of the decision or the date provided in the decision for compliance, whichever is later, file in the office of the Registrar of the Supreme Court a copy of the decision,

exclusive of the reasons therefor, in the prescribed form, whereupon the decision shall be entered in the same way as a judgment or order of that court and is enforceable as such.

(12) The *Arbitrations Act* does not apply to arbitrations under collective agreements. R.S.O. 1970, c. 232, s. 37 (6-11). R.S.O. 1980, c. 25 does not apply

45.—(1) Notwithstanding the arbitration provision in a collective agreement or deemed to be included in a collective agreement under section 44, a party to a collective agreement may request the Minister to refer to a single arbitrator, to be appointed by the Minister, any difference between the parties to the collective agreement arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable. Referral of grievances to a single arbitrator

(2) Subject to subsection (3), a request under subsection (1) may be made by a party to the collective agreement in writing after the grievance procedure under the agreement has been exhausted or after thirty days have elapsed from the time at which the grievance was first brought to the attention of the other party, whichever first occurs, but no such request shall be made beyond the time, if any, stipulated in or permitted under the agreement for referring the grievance to arbitration. Request for reference

(3) Notwithstanding subsection (2), where a difference between the parties to a collective agreement is a difference respecting discharge from or other termination of employment, a request under subsection (1) may be made by a party to the collective agreement in writing after the grievance procedure under the agreement has been exhausted or after fourteen days have elapsed from the time at which the grievance was first brought to the attention of the other party, whichever first occurs, but no such request shall be made beyond the time, if any, stipulated in or permitted under the agreement for referring the grievance to arbitration. Idem

(4) Where a request is received under subsection (1), the Minister shall appoint a single arbitrator who shall have exclusive jurisdiction to hear and determine the matter referred to him, including any question as to whether a matter is arbitrable and any question as to whether the request was timely. Minister to appoint arbitrator

(5) Where a request or more than one request concerns several differences arising under the collective agreement, Idem

the Minister may in his discretion appoint an arbitrator under subsection (4) to deal with all the differences raised in the request or requests.

Settlement
officer

(6) The Minister may appoint a settlement officer to confer with the parties and endeavour to effect a settlement prior to the hearing by an arbitrator appointed under subsection (4).

Powers and
duties of
arbitrator

(7) An arbitrator appointed under subsection (4) shall commence to hear the matter referred to him within twenty-one days after the receipt of the request by the Minister and the provisions of subsections 44 (6), (7), (8), (9), (10), (11) and (12) apply, with all necessary modifications, to the arbitrator, the parties and the decision of the arbitrator.

Oral
decisions

(8) Upon the agreement of the parties, the arbitrator shall deliver an oral decision forthwith or as soon as practicable without giving his reasons in writing therefor.

Payment of
arbitrator

(9) Where the Minister has appointed an arbitrator under subsection (4), each of the parties shall pay one-half of the remuneration and expenses of the person appointed.

Approval of
arbitrators,
etc.

(10) The Minister may establish a list of approved arbitrators and, for the purpose of advising him with respect to persons qualified to act as arbitrators and matters relating to arbitration, the Minister may constitute a labour-management advisory committee composed of a chairman to be designated by the Minister and six members, three of whom shall represent employers and three of whom shall represent trade unions, and their remuneration and expenses shall be as the Lieutenant Governor in Council determines.

Application

(11) This section does not apply to a collective agreement in operation on the day this section comes into force but applies to every collective agreement that is renewed or made after that date. 1979, c. 32, s. 1.

Permissive
provisions

46.—(1) Notwithstanding anything in this Act, but subject to subsection (4), the parties to a collective agreement may include in it provisions,

- (a) for requiring, as a condition of employment, membership in the trade union that is a party to or is bound by the agreement or granting a preference of employment to members of the trade union, or

requiring the payment of dues or contributions to the trade union;

- (b) for permitting an employee who represents the trade union that is a party to or is bound by the agreement to attend to the business of the trade union during working hours without deduction of the time so occupied in the computation of the time worked for the employer and without deduction of wages in respect of the time so occupied;
- (c) for permitting the trade union that is a party to or is bound by the agreement to use the employer's premises for the purposes of the trade union without payment therefor.

(2) No trade union that is a party to a collective agreement containing a provision mentioned in clause (1) (a) shall require the employer to discharge an employee because,

Where
non-member
employee
cannot be
required
to be
discharged

- (a) he has been expelled or suspended from membership in the trade union; or
- (b) membership in the trade union has been denied to or withheld from the employee,

for the reason that the employee,

- (c) was or is a member of another trade union;
- (d) has engaged in activity against the trade union or on behalf of another trade union;
- (e) has engaged in reasonable dissent within the trade union;
- (f) has been discriminated against by the trade union in the application of its membership rules; or
- (g) has refused to pay initiation fees, dues or other assessments to the trade union which are unreasonable.

Where
subs. (2)
does not
apply

(3) Subsection (2) does not apply to an employee who has engaged in unlawful activity against the trade union mentioned in clause (1) (a) or an officer, official or agent thereof or whose activity against the trade union or on behalf of another trade union has been instigated or procured by his employer or any person acting on his employer's behalf or whose employer or a person acting on his employer's behalf has participated in such activity or contributed financial or other support to the employee in respect of such activity. R.S.O. 1970, c. 232, s. 38 (1-3).

Union
security
provision
in first
agreement

(4) A trade union and the employer of the employees concerned shall not enter into a collective agreement that includes provisions requiring, as a condition of employment, membership in the trade union that is a party to or is bound by the agreement unless the trade union has established at the time it entered into the agreement that not less than 55 per cent of the employees in the bargaining unit were members of the trade union, but this subsection does not apply,

- (a) where the trade union has been certified as the bargaining agent of the employees of the employer in the bargaining unit; or
- (b) where the trade union has been a party to or bound by a collective agreement with the employer for at least one year; or
- (c) where the employer becomes a member of an employers' organization that has entered into a collective agreement with the trade union or council of trade unions containing such a provision and agrees with the trade union or council of trade unions to be bound by such agreement; or
- (d) where the employer and his employees in the bargaining unit are engaged in the construction, alteration, decoration, repair or demolition of a building, structure, road, sewer, water or gas main, pipe line, tunnel, bridge, canal, or other work at the site thereof. R.S.O. 1970, c. 232, s. 38 (4); 1975, c. 76, s. 11.

Continuation
of permissive
provisions

(5) Notwithstanding anything in this Act, where the parties to a collective agreement have included in it any

of the provisions permitted by subsection (1), any of such provisions may be continued in effect during the period when the parties are bargaining with a view to the renewal, with or without modifications, of such agreement or to the making of a new agreement.

(6) Notwithstanding anything in this Act, where the parties to a collective agreement have included in it any of the provisions permitted by subsection (1) and the employer who was a party to or was bound by the agreement sells his business within the meaning of section 63, any of such provisions as were included in the collective agreement may be continued in effect during the period when the person to whom the business was sold and the trade union that is the bargaining agent for his employees in the appropriate bargaining unit by reason of the sale bargain with a view to the making of a new agreement. R.S.O. 1970, c. 232, s. 38 (5, 6). ^{Idem}

47.—(1) Where the Board is satisfied that an employee because of his religious conviction or belief, ^{Religious objections}

(a) objects to joining a trade union; or

(b) objects to the paying of dues or other assessments to a trade union,

the Board may order that the provisions of a collective agreement of the type mentioned in clause 46 (1) (a) do not apply to such employee and that the employee is not required to join the trade union, to be or continue to be a member of the trade union, or to pay any dues, fees or assessments to the trade union, provided that amounts equal to any initiation fees, dues or other assessments are paid by the employee to or are remitted by the employer to a charitable organization mutually agreed upon by the employee and the trade union, but if the employee and the trade union fail to so agree then to such charitable organization registered as a charitable organization in Canada under Part I of the *Income Tax Act* (Canada) as may be designated by the Board. ^{R.S.C. 1952, c. 148}

(2) Subsection (1) applies to employees in the employ of an employer at the time a collective agreement containing a provision of the kind mentioned in subsection (1) is first entered into with that employer and only during the life of such collective agreement, and does not apply to employees whose employment commences after the entering into of the collective agreement. R.S.O. 1970, c. 232, s. 39, *revised*. ^{Application of subs. (1)}

OPERATION OF COLLECTIVE AGREEMENTS

Certain
agreements
not to be
treated as
collective
agreements

48. An agreement between an employer or an employers' organization and a trade union shall be deemed not to be a collective agreement for the purposes of this Act,

- (a) if an employer or an employers' organization participated in the formation or administration of the trade union or if an employer or an employers' organization contributed financial or other support to the trade union; or
- (b) if it discriminates against any person because of his race, creed, colour, nationality, ancestry, age, sex or place of origin. R.S.O. 1970, c. 232, s. 40; 1975, c. 76, s. 12.

More
than one
collective
agreement
prohibited

49. There shall be only one collective agreement at a time between a trade union or council of trade unions and an employer or employers' organization with respect to the employees in the bargaining unit defined in the collective agreement. R.S.O. 1970, c. 232, s. 41 (1).

Binding
effect of
collective
agreements
on employers,
trade unions
and
employees

50. A collective agreement is, subject to and for the purposes of this Act, binding upon the employer and upon the trade union that is a party to the agreement whether or not the trade union is certified and upon the employees in the bargaining unit defined in the agreement. R.S.O. 1970, c. 232, s. 42.

Binding
effect of
collective
agreements
on members
of employers'
organizations

51.—(1) A collective agreement between an employers' organization and a trade union or council of trade unions is, subject to and for the purposes of this Act, binding upon the employers' organization and each person who was a member of the employers' organization at the time the agreement was entered into and on whose behalf the employers' organization bargained with the trade union or council of trade unions as if it was made between each of such persons and the trade union or council of trade unions and upon the employees in the bargaining unit defined in the agreement, and, if any such person ceases to be a member of the employers' organization during the term of operation of the agreement, he shall, for the remainder of the term of operation of the agreement, be deemed to be a party to a like agreement with the trade union or council of trade unions.

(2) When an employers' organization commences to bargain with a trade union or council of trade unions, it shall deliver to the trade union, or council of trade unions a list of the names of the employers on whose behalf it is bargaining and, in default of so doing, it shall be deemed to bargain for all members of the employers' organization for whose employees the trade union or council of trade unions is entitled to bargain and to make a collective agreement at that time, except an employer who, either by himself or through the employers' organization, has notified the trade union or council of trade unions in writing before the agreement was entered into that he will not be bound by a collective agreement between the employers' organization and the trade union or council of trade unions.

Duty to disclose

(3) A collective agreement between a certified council of trade unions and an employer is, subject to and for the purposes of this Act, binding upon each trade union that is a constituent union of such a council as if it had been made between each of such trade unions and the employer.

Binding effect of collective agreements on members or affiliates of certified councils

(4) A collective agreement between a council of trade unions, other than a certified council of trade unions, and an employer or an employers' organization is, subject to and for the purposes of this Act, binding upon the council of trade unions and each trade union that was a member of or affiliated with the council of trade unions at the time the agreement was entered into and on whose behalf the council of trade unions bargained with the employer or employers' organization as if it was made between each of such trade unions and the employer or employers' organization, and upon the employees in the bargaining unit defined in the agreement and, if any such trade union ceases to be a member of or affiliated with the council of trade unions during the term of operation of the agreement, it shall, for the remainder of the term of operation of the agreement, be deemed to be a party to a like agreement with the employer or employers' organization, as the case may be.

Binding effect of collective agreements on members or affiliates of councils of trade unions

(5) Where a council of trade unions, other than a certified council of trade unions, commences to bargain with an employer or an employers' organization, it shall deliver to the employer or employers' organization a list of the names of the trade unions on whose behalf it is bargaining and, in default of so doing, it shall be deemed to bargain for all members or affiliates of the council of

Duty to disclose

trade unions for whose employees the respective trade unions are entitled to bargain and to make a collective agreement at that time with the employer or the employers' organization, except a trade union that, either by itself or through the council of trade unions, has notified the employer or employer's organization in writing before the agreement is entered into that it will not be bound by a collective agreement between the council of trade unions and the employer or employers' organization. R.S.O. 1970, c. 232, s. 43.

Minimum
term of
collective
agreements

52.—(1) If a collective agreement does not provide for its term of operation or provides for its operation for an unspecified term or for a term of less than one year, it shall be deemed to provide for its operation for a term of one year from the date that it commenced to operate. R.S.O. 1970, c. 232, s. 44 (1).

Extension
of term of
collective
agreement

(2) Notwithstanding subsection (1), the parties may, in a collective agreement or otherwise and before or after the collective agreement has ceased to operate, agree to continue the operation of the collective agreement or any of its provisions for a period of less than one year while they are bargaining for its renewal with or without modifications or for a new agreement, but such continued operation does not bar an application for certification or for a declaration that the trade union no longer represents the employees in the bargaining unit and the continuation of the collective agreement may be terminated by either party upon thirty days notice to the other party. 1975, c. 76, s. 13.

Early
termination
of collective
agreements

(3) A collective agreement shall not be terminated by the parties before it ceases to operate in accordance with its provisions or this Act without the consent of the Board on the joint application of the parties.

Idem

(4) Notwithstanding anything in this section, where an employer joins an employers' organization that is a party to a collective agreement with a trade union or council of trade unions and he agrees with the trade union or council of trade unions to be bound by the collective agreement between the trade union or council of trade unions and the employers' organization, the agreement ceases to be binding upon the employer and the trade union or council of trade unions at the same time as the agreement between the employers' organization and the trade union or council of trade unions ceases to be binding.

(5) Nothing in this section prevents the revision by mutual consent of the parties at any time of any provision of a collective agreement other than a provision relating to its term of operation. R.S.O. 1970, c. 232, s. 44 (3-5).

Revision
by mutual
consent

53.—(1) Either party to a collective agreement may, within the period of ninety days before the agreement ceases to operate, give notice in writing to the other party of its desire to bargain with a view to the renewal, with or without modifications, of the agreement then in operation or to the making of a new agreement.

Notice of
desire to
bargain
for new
collective
agreement

(2) A notice given by a party to a collective agreement in accordance with provisions in the agreement relating to its termination or renewal shall be deemed to comply with subsection (1).

Idem

(3) Where notice is given by or to an employers' organization that has a collective agreement with a trade union or council of trade unions, it shall be deemed to be a notice given by or to each member of the employers' organization who is bound by the agreement or who has ceased to be a member of the employers' organization but has not notified the trade union or council of trade unions in writing that he has ceased to be a member.

Notice of
desire for
new
collective
agreement
for
employers'
organization

(4) Where notice is given by or to a council of trade unions, other than a certified council of trade unions, that has a collective agreement with an employer or employers' organization, it shall be deemed to be a notice given by or to each member or affiliate of the council of trade unions that is bound by the agreement or that has ceased to be a member or affiliate of the council of trade unions but has not notified the employer or employers' organization in writing that it has ceased to be a member or affiliate. R.S.O. 1970, c. 232, s. 45.

Idem

54. Sections 15 to 34 apply to the bargaining that follows the giving of a notice under section 53. R.S.O. 1970, c. 232, s. 46.

Application
of ss. 15-34

55.—(1) Where a certified council of trade unions is a party to or is bound by a collective agreement, no resolution, by-law or other action by the constituent unions of a certified council of trade unions to dissolve the council or by a constituent union of such a council to withdraw from the council, as the case may be, has effect,

Dissolution
of councils
of certified
trade unions

(a) unless a copy of such resolution, by-law or other action is delivered to the employer or the employers' organization and, in the case of a withdrawal, to the other constituent members and to the council at least ninety days before the collective agreement ceases to operate; and

(b) until the collective agreement ceases to operate.

Idem

(2) Where a certified council of trade unions is not a party to or is not bound by a collective agreement, no resolution, by-law or other action by the constituent unions of a certified council of trade unions to dissolve the council or by a constituent union of such a council to withdraw from the council, as the case may be, has effect until the ninetieth day after the day on which a copy of such resolution, by-law or other action is delivered to the employer or the employers' organization and, in the case of a withdrawal, to the other constituent members and to the council. R.S.O. 1970, c. 232, s. 47.

TERMINATION OF BARGAINING RIGHTS

Effect of
certification

56.—(1) If the trade union that applies for certification under subsection 5 (4), (5) or (6) is certified as bargaining agent for any of the employees in the bargaining unit defined in the collective agreement, the trade union that was or is a party to the agreement, as the case may be, forthwith ceases to represent the employees in the bargaining unit determined in the certificate and the agreement ceases to operate in so far as it affects such employees.

Idem

(2) If the trade union that applies for certification under subsection 5 (2) is certified as bargaining agent for any of the employees in the bargaining unit defined in the certificate issued to the trade union that was previously certified, the latter trade union forthwith ceases to represent the employees in the bargaining unit defined in the certificate issued to the former trade union. R.S.O. 1970, c. 232, s. 48.

Application
for termina-
tion, no
agreement

57.—(1) If a trade union does not make a collective agreement with the employer within one year after its certification, any of the employees in the bargaining unit determined in the certificate may, subject to section 61, apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit.

Idem,
agreement

(2) Any of the employees in the bargaining unit defined in a collective agreement may, subject to section 61, apply

to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit,

- (a) in the case of a collective agreement for a term of not more than three years, only after the commencement of the last two months of its operation;
- (b) in the case of a collective agreement for a term of more than three years, only after the commencement of the thirty-fifth month of its operation and before the commencement of the thirty-seventh month of its operation and during the two-month period immediately preceding the end of each year that the agreement continues to operate thereafter or after the commencement of the last two months of its operation, as the case may be;
- (c) in the case of a collective agreement referred to in clause (a) or (b) that provides that it will continue to operate for any further term or successive terms if either party fails to give to the other notice of termination or of its desire to bargain with a view to the renewal, with or without modifications, of the agreement or to the making of a new agreement, only during the last two months of each year that it so continues to operate or after the commencement of the last two months of its operation, as the case may be. R.S.O. 1970, c. 232, s. 49 (1, 2).

(3) Upon an application under subsection (1) or (2), the Board shall ascertain the number of employees in the bargaining unit at the time the application was made and whether not less than 45 per cent of the employees in the bargaining unit have voluntarily signified in writing at such time as is determined under clause 103 (2) (j) that they no longer wish to be represented by the trade union, and, if not less than 45 per cent have so signified, the Board shall, by a representation vote, satisfy itself that a majority of the employees desire that the right of the trade union to bargain on their behalf be terminated. R.S.O. 1970, c. 232, s. 49 (3); 1975, c. 76, s. 14.

(4) If on the taking of the representation vote more than 50 per cent of the ballots cast are cast in opposition to the trade union, the Board shall declare that the trade union that was certified or that was or is a party to the collective agreement, as the case may be, no longer represents the employees in the bargaining unit.

Representa-
tion vote

Declaration
of
termination
following
vote

Declaration
of
termination
on abandon-
ment

(5) Upon an application under subsection (1) or (2), where the trade union concerned informs the Board that it does not desire to continue to represent the employees in the bargaining unit, the Board may declare that the trade union no longer represents the employees in the bargaining unit.

Declaration
to terminate
agreement

(6) Upon the Board making a declaration under subsection (4) or (5), any collective agreement in operation between the trade union and the employer that is binding upon the employees in the bargaining unit ceases to operate forthwith. R.S.O. 1970, c. 232, s. 49 (4-6).

Where
certificate
obtained
by fraud

58. If a trade union has obtained a certificate by fraud, the Board may at any time declare that the trade union no longer represents the employees in the bargaining unit and, upon the making of such a declaration, the trade union is not entitled to claim any rights or privileges flowing from certification and, if it has made a collective agreement binding upon the employees in the bargaining unit, the collective agreement is void. R.S.O. 1970, c. 232, s. 50.

Termination,
for failure
to give
notice

59.—(1) If a trade union fails to give the employer notice under section 14 within sixty days following certification or if it fails to give notice under section 53 and no such notice is given by the employer, the Board may, upon the application of the employer or of any of the employees in the bargaining unit, and with or without a representation vote, declare that the trade union no longer represents the employees in the bargaining unit.

for failure
to bargain

(2) Where a trade union that has given notice under section 14 or section 53 or that has received notice under section 53 fails to commence to bargain within sixty days from the giving of the notice or, after having commenced to bargain but before the Minister has appointed a conciliation officer or mediator, allows a period of sixty days to elapse during which it has not sought to bargain, the Board may, upon the application of the employer or of any of the employees in the bargaining unit and with or without a representation vote, declare that the trade union no longer represents the employees in the bargaining unit. R.S.O. 1970, c. 232, s. 51.

Termination
of bargaining
rights after
voluntary
recognition

60.—(1) Where an employer and a trade union that has not been certified as the bargaining agent for a bargaining unit of employees of the employer enter into a collective agreement, or a recognition agreement as provided for in sub-

section 16 (3), the Board may, upon the application of any employee in the bargaining unit or of a trade union representing any employee in the bargaining unit, during the first year of the period of time that the first collective agreement between them is in operation or, if no collective agreement has been entered into, within one year from the signing of such recognition agreement, declare that the trade union was not, at the time the agreement was entered into, entitled to represent the employees in the bargaining unit.

(2) Before disposing of an application under subsection (1), the Board may make such inquiry, require the production of such evidence and the doing of such things, or hold such representation votes, as it considers appropriate. Powers of Board before disposing of application

(3) On an application under subsection (1), the onus of establishing that the trade union was entitled to represent the employees in the bargaining unit at the time the agreement was entered into rests on the parties to the agreement. Onus

(4) Upon the Board making a declaration under subsection (1), the trade union forthwith ceases to represent the employees in the defined bargaining unit in the recognition agreement or collective agreement and any collective agreement in operation between the trade union and the employer ceases to operate forthwith in respect of the employees affected by the application. R.S.O. 1970, c. 232, s. 52. Declaration to terminate agreement

TIMELINESS OF REPRESENTATION APPLICATIONS

61.—(1) Subject to subsection (3), where a trade union has not made a collective agreement within one year after its certification and the Minister has appointed a conciliation officer or a mediator under this Act, no application for certification of a bargaining agent of, or for a declaration that a trade union no longer represents, the employees in the bargaining unit determined in the certificate shall be made until, Application for certification or termination after conciliation

- (a) thirty days have elapsed after the Minister has released to the parties the report of a conciliation board or mediator; or
- (b) thirty days have elapsed after the Minister has released to the parties a notice that he does not consider it advisable to appoint a conciliation board; or
- (c) six months have elapsed after the Minister has released to the parties a notice of a report of the

conciliation officer that the differences between the parties concerning the terms of a collective agreement have been settled,

as the case may be.

Application
for certifica-
tion or
termination
after
conciliation

(2) Where notice has been given under section 53 and the Minister has appointed a conciliation officer or a mediator, no application for certification of a bargaining agent of any of the employees in the bargaining units as defined in the collective agreement and no application for a declaration that the trade union that was a party to the collective agreement no longer represents the employees in the bargaining unit as defined in the agreement shall be made after the date when the agreement ceased to operate or the date when the Minister appointed a conciliation officer or a mediator, whichever is later, unless, following the appointment of a conciliation officer or a mediator, if no collective agreement has been made,

- (a) at least twelve months have elapsed from the date of the appointment of the conciliation officer or a mediator; or
- (b) a conciliation board or a mediator has been appointed and thirty days have elapsed after the report of the conciliation board or the mediator has been released by the Minister to the parties; or
- (c) thirty days have elapsed after the Minister has informed the parties that he does not consider it desirable to appoint a conciliation board,

whichever is later.

Application
for
certification
or termina-
tion during
lawful strike

(3) Where a trade union has given notice under section 14 and the employees in the bargaining unit on whose behalf the trade union was certified as bargaining agent thereafter engage in a lawful strike or the employer lawfully locks out such employees, no application for certification of a bargaining agent or, for a declaration that the trade union no longer represents, the employees in the bargaining unit determined in the certificate shall be made,

- (a) until six months have elapsed after the strike or lock-out commenced; or
- (b) until seven months have elapsed after the Minister has released to the parties the report of the conciliation board or mediator or a notice that the

Minister does not consider it advisable to appoint a conciliation board,

whichever occurs first.

(4) Subsections (1) and (3) apply with necessary modifications to an application made under subsection 5 (3). R.S.O. 1970, c. 232, s. 53. ^{Application of subss. (1), (3)}

SUCCESSOR RIGHTS

62.—(1) Where a trade union claims that by reason of a merger or amalgamation or a transfer of jurisdiction it is the successor of a trade union that at the time of the merger, amalgamation or transfer of jurisdiction was the bargaining agent of a unit of employees of an employer and any question arises in respect of its rights to act as the successor, the Board, in any proceeding before it or on the application of any person or trade union concerned, may declare that the successor has or has not, as the case may be, acquired the rights, privileges and duties under this Act of its predecessor, or the Board may dismiss the application. ^{Declaration of successor union}

(2) Before issuing a declaration under subsection (1), the Board may make such inquiry, require the production of such evidence or hold such representation votes as it considers appropriate. ^{Idem}

(3) Where the Board makes an affirmative declaration under subsection (1), the successor shall for the purposes of this Act be conclusively presumed to have acquired the rights, privileges and duties of its predecessor, whether under a collective agreement or otherwise, and the employer, the successor and the employees concerned shall recognize such status in all respects. R.S.O. 1970, c. 232, s. 54. ^{Idem}

63.—(1) In this section,

^{Interpretation}

(a) “business” includes a part or parts thereof;

(b) “sells” includes leases, transfers and any other manner of disposition, and “sold” and “sale” have corresponding meanings.

(2) Where an employer who is bound by or is a party to a collective agreement with a trade union or council of trade unions sells his business, the person to whom the business has been sold is, until the Board otherwise declares, bound by the collective agreement as if he had been a ^{Successor employer}

party thereto and, where an employer sells his business while an application for certification or termination of bargaining rights to which he is a party is before the Board, the person to whom the business has been sold is, until the Board otherwise declares, the employer for the purposes of the application as if he were named as the employer in the application. R.S.O. 1970, c. 232, s. 55 (1, 2).

Idem

(3) Where an employer on behalf of whose employees a trade union or council of trade unions, as the case may be, has been certified as bargaining agent or has given or is entitled to give notice under section 14 or 53, sells his business, the trade union, or council of trade unions continues, until the Board otherwise declares, to be the bargaining agent for the employees of the person to whom the business was sold in the like bargaining unit in that business, and the trade union or council of trade unions is entitled to give to the person to whom the business was sold a written notice of its desire to bargain with a view to making a collective agreement or the renewal, with or without modifications, of the agreement then in operation and such notice has the same effect as a notice under section 14 or 53, as the case requires. 1975, c. 76, s. 15 (1).

Powers of
Board

(4) Where a business was sold to a person and a trade union or council of trade unions was the bargaining agent of any of the employees in such business or a trade union or council of trade unions is the bargaining agent of the employees in any business carried on by the person to whom the business was sold, and,

- (a) any question arises as to what constitutes the like bargaining unit referred to in subsection (3); or
- (b) any person, trade union or council of trade unions claims that, by virtue of the operation of subsection (2) or (3), a conflict exists between the bargaining rights of the trade union or council of trade unions that represented the employees of the predecessor employer and the trade union or council of trade unions that represents the employees of the person to whom the business was sold,

the Board may, upon the application of any person, trade union or council of trade unions concerned,

- (c) define the composition of the like bargaining unit referred to in subsection (3) with such modification, if any, as the Board considers necessary; and

- (d) amend, to such extent as the Board considers necessary, any bargaining unit in any certificate issued to any trade union or any bargaining unit defined in any collective agreement.

(5) The Board may, upon the application of any person, ^{Idem} trade union or council of trade unions concerned, made within sixty days after the successor employer referred to in subsection (2) becomes bound by the collective agreement, or within sixty days after the trade union or council of trade unions has given a notice under subsection (3), terminate the bargaining rights of the trade union or council of trade unions bound by the collective agreement or that has given notice, as the case may be, if, in the opinion of the Board, the person to whom the business was sold has changed its character so that it is substantially different from the business of the predecessor employer.

(6) Notwithstanding subsections (2) and (3), where a business ^{Idem} was sold to a person who carries on one or more other businesses and a trade union or council of trade unions is the bargaining agent of the employees in any of the businesses and such person intermingles the employees of one of the businesses with those of another of the businesses, the Board may, upon the application of any person, trade union or council of trade unions concerned,

- (a) declare that the person to whom the business was sold is no longer bound by the collective agreement referred to in subsection (2);
- (b) determine whether the employees concerned constitute one or more appropriate bargaining units;
- (c) declare which trade union, trade unions or council of trade unions, if any, shall be the bargaining agent or agents for the employees in such unit or units; and
- (d) amend, to such extent as the Board considers necessary, any certificate issued to any trade union or council of trade unions or any bargaining unit defined in any collective agreement.

(7) Where a trade union or council of trade unions is declared to be the bargaining agent under subsection (6) and it is not already bound by a collective agreement with the successor employer with respect to the employees for whom it is declared to be the bargaining agent, it is entitled to give to the employer a written notice of its ^{Notice to bargain}

desire to bargain with a view to making a collective agreement, and such notice has the same effect as a notice under section 14.

Powers of
Board before
disposing of
application

(8) Before disposing of any application under this section, the Board may make such inquiry, may require the production of such evidence and the doing of such things, or may hold such representation votes, as it considers appropriate.

Where
employer not
required to
bargain

(9) Where an application is made under this section, an employer is not required, notwithstanding that a notice has been given by a trade union or council of trade unions, to bargain with that trade union or council of trade unions concerning the employees to whom the application relates until the Board has disposed of the application and has declared which trade union or council of trade unions, if any, has the right to bargain with the employer on behalf of the employees concerned in the application.

Effect of
notice or
declaration

(10) For the purposes of sections 5, 57, 59, 61 and 123, a notice given by a trade union or council of trade unions under subsection (3) or a declaration made by the Board under subsection (6) has the same effect as a certification under section 7. R.S.O. 1970, c. 232, s. 55 (4-10).

Successor
municipalities
R.S.O. 1980,
c. 303

(11) Where one or more municipalities as defined in the *Municipal Affairs Act* is erected into another municipality, or two or more such municipalities are amalgamated, united or otherwise joined together, or all or part of one such municipality is annexed, attached or added to another such municipality, the employees of the municipalities concerned shall be deemed to have been intermingled, and,

- (a) the Board may exercise the like powers as it may exercise under subsections (6) and (8) with respect to the sale of a business under this section;
- (b) the new or enlarged municipality has the like rights and obligations as a person to whom a business is sold under this section and who intermingles the employees of one of his businesses with those of another of his businesses; and
- (c) any trade union or council of trade unions concerned has the like rights and obligations as it would have in the case of the intermingling of employees

in two or more businesses under this section.
R.S.O. 1970, c. 232, s. 55 (11); 1972, c. 1,
s. 104 (6).

(12) Where, on any application under this section or in any other proceeding before the Board, a question arises as to whether a business has been sold by one employer to another, the Board shall determine the question and its decision thereon is final and conclusive for the purposes of this Act. R.S.O. 1970, c. 232, s. 55 (12).

Power of
Board to
determine
whether
sale

(13) Where, on an application under this section, a trade union alleges that the sale of a business has occurred, the respondents to the application shall adduce at the hearing all facts within their knowledge that are material to the allegation. 1975, c. 76, s. 15 (2).

Duty of
respondents

UNFAIR PRACTICES

64. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or contribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of his freedom to express his views so long as he does not use coercion, intimidation, threats, promises or undue influence. R.S.O. 1970, c. 232, s. 56.

Employers,
etc., not
to interfere
with unions

65. No trade union and no person acting on behalf of a trade union shall participate in or interfere with the formation or administration of an employers' organization or contribute financial or other support to an employers' organization. R.S.O. 1970, c. 232, s. 57.

Unions not
to interfere
with
employers'
organizations

66. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

Employers
not to
interfere
with
employees'
rights

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act;
- (b) shall impose any condition in a contract of employment or propose the imposition of any condition in a contract of employment that seeks to restrain an employee or a person seeking employment from becoming a member of a trade union or exercising any other rights under this Act; or

- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act. R.S.O. 1970, c. 232, s. 58.

Employers
not to
interfere
with bar-
gaining
rights

67.—(1) No employer, employers' organization or person acting on behalf of an employer or an employers' organization shall, so long as a trade union continues to be entitled to represent the employees in a bargaining unit, bargain with or enter into a collective agreement with any person or another trade union or a council of trade unions on behalf of or purporting, designed or intended to be binding upon the employees in the bargaining unit or any of them.

Trade
unions not
to interfere
with
bargaining
rights

(2) No trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions shall, so long as another trade union continues to be entitled to represent the employees in a bargaining unit, bargain with or enter into a collective agreement with an employer or an employers' organization on behalf of or purporting, designed or intended to be binding upon the employees in the bargaining unit or any of them. R.S.O. 1970, c. 232, s. 59.

Duty of fair
representa-
tion by
trade union,
etc.

68. A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be. R.S.O. 1970, c. 232, s. 60.

Duty of
fair
referral,
etc., by
trade unions

69. Where, pursuant to a collective agreement, a trade union is engaged in the selection, referral, assignment, designation or scheduling of persons to employment, it shall not act in a manner that is arbitrary, discriminatory or in bad faith. 1975, c. 76, s. 16.

Intimidation
and coercion

70. No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising

any other rights under this Act or from performing any obligations under this Act. R.S.O. 1970, c. 232, s. 61.

71. Nothing in this Act authorizes any person to attempt at the place at which an employee works to persuade him during his working hours to become or refrain from becoming or continuing to be a member of a trade union. R.S.O. 1970, c. 232, s. 62. Persuasion during working hours

72.—(1) Where a collective agreement is in operation, no employee bound by the agreement shall strike and no employer bound by the agreement shall lock out such an employee. R.S.O. 1970, c. 232, s. 63 (1). Strike or lock-out, agreement

(2) Where no collective agreement is in operation, no employee shall strike and no employer shall lock out an employee until the Minister has appointed a conciliation officer or a mediator under this Act and, No agreement

(a) seven days have elapsed after the day the Minister has released or is deemed pursuant to subsection 113 (3) to have released to the parties the report of a conciliation board or mediator; or

(b) fourteen days have elapsed after the day the Minister has released or is deemed pursuant to subsection 113 (3) to have released to the parties a notice that he does not consider it advisable to appoint a conciliation board. 1975, c. 76, s. 17.

(3) No employee shall threaten an unlawful strike and no employer shall threaten an unlawful lock-out of an employee. Threatening strike or lock-out

(4) A strike vote or a vote to ratify a proposed collective agreement taken by a trade union shall be by ballots cast in such a manner that a person expressing his choice cannot be identified with the choice expressed. R.S.O. 1970, c. 232, s. 63 (3, 4). Strike or ratification vote to be secret

(5) All employees in a bargaining unit, whether or not such employees are members of the trade union or of any constituent union of a council of trade unions, shall be entitled to participate in a strike vote or a vote to ratify a proposed collective agreement. 1980, c. 34, s. 3. Right to vote

(6) Any vote mentioned in subsection (4) shall be conducted in such a manner that those entitled to vote have ample opportunity to cast their ballots. R.S.O. 1970, c. 232, s. 63 (5). Opportunity to vote

Reinstatement of employee

73.—(1) Where an employee engaging in a lawful strike makes an unconditional application in writing to his employer within six months from the commencement of the lawful strike to return to work, the employer shall, subject to subsection (2), reinstate the employee in his former employment, on such terms as the employer and employee may agree upon, and the employer in offering terms of employment shall not discriminate against the employee by reason of his exercising or having exercised any rights under this Act.

Exceptions

(2) An employer is not required to reinstate an employee who has made an application to return to work in accordance with subsection (1),

(a) where the employer no longer has persons engaged in performing work of the same or similar nature to work which the employee performed prior to his cessation of work; or

(b) where there has been a suspension or discontinuance for cause of an employer's operations, or any part thereof, but, if the employer resumes such operations, the employer shall first reinstate those employees who have made an application under subsection (1).
R.S.O. 1970, c. 232, s. 64.

Unlawful strike

74. No trade union or council of trade unions shall call or authorize or threaten to call or authorize an unlawful strike and no officer, official or agent of a trade union or council of trade unions shall counsel, procure, support or encourage an unlawful strike or threaten an unlawful strike.
R.S.O. 1970, c. 232, s. 65.

Unlawful lock-out

75. No employer or employers' organization shall call or authorize or threaten to call or authorize an unlawful lock-out and no officer, official or agent of an employer or employers' organization shall counsel, procure, support or encourage an unlawful lock-out or threaten an unlawful lock-out. R.S.O. 1970, c. 232, s. 66.

Causing unlawful strikes, lock-outs

76.—(1) No person shall do any act if he knows or ought to know that, as a probable and reasonable consequence of the act, another person or persons will engage in an unlawful strike or an unlawful lock-out.

Application of subs. (1)

(2) Subsection (1) does not apply to any act done in connection with a lawful strike or lawful lock-out. R.S.O. 1970, c. 232, s. 67.

77. Nothing in this Act prohibits any suspension or discontinuance for cause of an employer's operations or the quitting of employment for cause if the suspension, discontinuance or quitting does not constitute a lock-out or strike. R.S.O. 1970, c. 232, s. 68.

Saving

78. No trade union shall suspend, expel or penalize in any way a member because he has refused to engage in or to continue to engage in a strike that is unlawful under this Act. R.S.O. 1970, c. 232, s. 69.

Refusal to engage in unlawful strike

79.—(1) Where notice has been given under section 14 or section 53 and no collective agreement is in operation, no employer shall, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty, of the employer, the trade union or the employees, and no trade union shall, except with the consent of the employer, alter any term or condition of employment or any right, privilege or duty of the employer, the trade union or the employees,

Working conditions may not be altered

(a) until the Minister has appointed a conciliation officer or a mediator under this Act, and,

(i) seven days have elapsed after the Minister has released to the parties the report of a conciliation board or mediator, or

(ii) fourteen days have elapsed after the Minister has released to the parties a notice that he does not consider it advisable to appoint a conciliation board,

as the case may be; or

(b) until the right of the trade union to represent the employees has been terminated,

whichever occurs first. R.S.O. 1970, c. 232, s. 70 (1).

(2) Where a trade union has applied for certification and notice thereof from the Board has been received by the employer, the employer shall not, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty of the employer or the employees until,

Idem

(a) the trade union has given notice under section 14, in which case subsection (1) applies; or

- (b) the application for certification by the trade union is dismissed or terminated by the Board or withdrawn by the trade union. 1975, c. 76, s. 18.

Differences
may be
arbitrated

(3) Where notice has been given under section 53 and no collective agreement is in operation, any difference between the parties as to whether or not subsection (1) of this section was complied with may be referred to arbitration by either of the parties as if the collective agreement was still in operation and section 44 applies with necessary modifications thereto. R.S.O. 1970, c. 232, s. 70 (3).

Protection of
witnesses
rights

80.—(1) No employer, employers' organization or person acting on behalf of an employer or employers' organization shall,

- (a) refuse to employ or continue to employ a person;
- (b) threaten dismissal or otherwise threaten a person;
- (c) discriminate against a person in regard to employment or a term or condition of employment; or
- (d) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of a belief that he may testify in a proceeding under this Act or because he has made or is about to make a disclosure that may be required of him in a proceeding under this Act or because he has made an application or filed a complaint under this Act or because he has participated or is about to participate in a proceeding under this Act.

Idem

(2) No trade union, council of trade unions or person acting on behalf of a trade union or council of trade unions shall,

- (a) discriminate against a person in regard to employment or a term or condition of employment; or
- (b) intimidate or coerce or impose a pecuniary or other penalty on a person,

because of a belief that he may testify in a proceeding under this Act or because he has made or is about to make a disclosure that may be required of him in a proceed-

ing under this Act or because he has made an application or filed a complaint under this Act or because he has participated or is about to participate in a proceeding under this Act. R.S.O. 1970, c. 232, s. 71.

81. No person shall wilfully destroy, mutilate, obliterate, alter, deface or remove or cause to be destroyed, mutilated, obliterated, altered, defaced or removed any notice that the Board has required to be posted during the period that the notice is required to be posted. R.S.O. 1970, c. 232, s. 72.

Removal,
etc., of
posted
notices

LOCALS UNDER TRUSTEESHIP

82.—(1) A provincial, national or international trade union that assumes supervision or control over a subordinate trade union, whereby the autonomy of such subordinate trade union, under the constitution or by-laws of the provincial, national or international trade union is suspended, shall, within sixty days after it has assumed supervision or control over the subordinate trade union, file with the Board a statement in the prescribed form, verified by the affidavit of its principal officers, setting out the terms under which supervision or control is to be exercised and it shall, upon the direction of the Board, file such additional information concerning such supervision and control as the Minister may from time to time require.

Trusteeship
over local
unions

(2) Where a provincial, national or international trade union has assumed supervision or control over a subordinate trade union, such supervision or control shall not continue for more than twelve months from the date of such assumption, but such supervision or control may be continued for a further period of twelve months with the consent of the Board. R.S.O. 1970, c. 232, s. 73.

Duration of
trusteeship

INFORMATION

83. Each party to a collective agreement shall, forthwith after it is made, file one copy thereof with the Minister. R.S.O. 1970, c. 232, s. 74.

Collective
agreements
to be filed

84. The Board may direct a trade union, council of trade unions or employers' organization to file with the Board within the time prescribed in the direction a copy of its constitution and by-laws and a statutory declaration of its president or secretary setting forth the names and addresses of its officers. R.S.O. 1970, c. 232, s. 75.

Officers,
constitution,
etc.

Duty of
union to
furnish
financial
statement
to members

85.—(1) Every trade union shall upon the request of any member furnish him, without charge, with a copy of the audited financial statement of its affairs to the end of its last fiscal year certified by its treasurer or other officer responsible for the handling and administration of its funds to be a true copy, and, upon the complaint of any member that the trade union has failed to furnish such a statement to him, the Board may direct the trade union to file with the Registrar of the Board, within such time as the Board may determine, a copy of the audited financial statement of its affairs to the end of its last fiscal year verified by the affidavit of its treasurer or other officer responsible for the handling and administration of its funds and to furnish a copy of such statement to such members of the trade union as the Board in its discretion may direct, and the trade union shall comply with such direction according to its terms. R.S.O. 1970, c. 232, s. 76.

Complaint
that
financial
statement
inadequate

(2) Where a member of a trade union complains that an audited financial statement is inadequate, the Board may inquire into the complaint and the Board may order the trade union to prepare another audited financial statement in a form and containing such particulars as the Board considers appropriate and the Board may further order that the audited financial statement, as rectified, be certified by a person licensed under the *Public Accountancy Act* or a firm whose partners are licensed under that Act. 1975, c. 76, s. 19.

R.S.O. 1980,
c. 405

Interpre-
tation

86.—(1) In this section, “administrator” means any trade union, trustee or person responsible for the control, management or disposition of moneys received or contributed to a vacation pay fund or a welfare benefit or pension plan or fund for the members of a trade union or their survivors or beneficiaries.

Annual filing
of statement

(2) Every administrator shall file annually with the Minister not later than the 1st day of June in each year or at such other time or times as the Minister may direct, a copy of the audited financial statement certified by a person licensed under the *Public Accountancy Act* or a firm whose partners are licensed under that Act of a vacation pay fund, or a welfare benefit or pension plan or fund setting out its financial condition for the preceding fiscal year and dis-closing,

(a) a description of the coverage provided by the fund or plan;

(b) the amount contributed by each employer;

- (c) the amounts contributed by the members and the trade union, if any;
- (d) a statement of the assets, specifying the total amount of each type of asset;
- (e) a statement of liabilities, receipts and disbursements;
- (f) a statement of salaries, fees and commissions charged to the fund or plan, to whom paid, in what amount and for what purposes; and
- (g) such further information as the Minister may require.

(3) The administrator, upon the request in writing of any member of the trade union whose employer has made payments or contributions into the fund or plan, shall furnish to the member without charge a copy of the audited financial statement required to be filed by subsection (2). Furnishing of copy to member of trade union

(4) Where an administrator has failed to comply with subsection (2) or (3), upon a certificate of failure so to comply signed by the Minister or upon complaint by the member, the Board may direct the administrator to comply within such time as the Board may determine. 1975, c. 76, s. 20. Where Board may direct compliance

87.—(1) Every trade union and unincorporated employers' organization in Ontario that has members in Ontario shall, within fifteen days after it has enrolled its first member, file with the Board a notice in the prescribed form giving the name and address of a person resident in Ontario who is authorized by the trade union or unincorporated employers' organization to accept on its behalf service of process and notices under this Act. Representative for service of process

(2) Whenever a trade union or unincorporated employers' organization changes the authorization referred to in subsection (1), it shall file with the Board notice thereof in the prescribed form within fifteen days after making such change. Change in representative

(3) Service on the person named in a notice or the latest notice, as the case may be, filed under subsection (1) is good and sufficient service for the purposes of this Act on the trade union or unincorporated employers' organization that filed the notice. R.S.O. 1970, c. 232, s. 77. Service of notice

88. Every publication that deals with the relations between employers or employers' organizations and trade Publications

unions or employees shall bear the names and addresses of its printer and its publisher. R.S.O. 1970, c. 232, s. 78.

ENFORCEMENT

Inquiry
by
labour
relations
officer

89.—(1) The Board may authorize a labour relations officer to inquire into any complaint alleging a contravention of this Act.

Duties

(2) The labour relations officer shall forthwith inquire into the complaint and endeavour to effect a settlement of the matter complained of.

Report

(3) The labour relations officer shall report the results of his inquiry and endeavours to the Board.

Remedy for
discrimina-
tion

(4) Where a labour relations officer is unable to effect a settlement of the matter complained of or where the Board in its discretion considers it advisable to dispense with an inquiry by a labour relations officer, the Board may inquire into the complaint of a contravention of this Act and where the Board is satisfied that an employer, employers' organization, trade union, council of trade unions, person or employee has acted contrary to this Act it shall determine what, if anything, the employer, employers' organization, trade union, council of trade unions, person or employee shall do or refrain from doing with respect thereto and such determination, without limiting the generality of the foregoing may include, notwithstanding the provisions of any collective agreement, any one or more of,

- (a) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to cease doing the act or acts complained of;
- (b) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to rectify the act or acts complained of; or
- (c) an order to reinstate in employment or hire the person or employee concerned, with or without compensation, or to compensate in lieu of hiring or reinstatement for loss of earnings or other employment benefits in an amount that may be assessed by the Board against the employer, employers' organization, trade union, council of trade unions, employee or other person jointly or severally.

(5) On an inquiry by the Board into a complaint under subsection (4) that a person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to his employment, opportunity for employment or conditions of employment, the burden of proof that any employer or employers' organization did not act contrary to this Act lies upon the employer or employers' organization. 1975, c. 76, s. 21 (1). Burden of proof

(6) Where the trade union, council of trade unions, employer, employers' organization, person or employee, has failed to comply with any of the terms of the determination, any trade union, council of trade unions, employer, employers' organization, person or employee, affected by the determination may, after the expiration of fourteen days from the date of the release of the determination or the date provided in the determination for compliance, whichever is later, notify the Board in writing of such failure, and thereupon the Board shall file in the office of the Registrar of the Supreme Court a copy of the determination, exclusive of the reasons therefor, if any, in the prescribed form, whereupon the determination shall be entered in the same way as a judgment or order of that court and is enforceable as such. R.S.O. 1970, c. 232, s. 79 (5). Enforcement of determination

(7) Where the matter complained of has been settled, whether through the endeavours of the labour relations officer or otherwise, and the terms of the settlement have been put in writing and signed by the parties or their representatives, the settlement is binding upon the parties, the trade union, council of trade unions, employer, employers' organization, person or employee who have agreed to the settlement and shall be complied with according to its terms, and a complaint that the trade union, council of trade unions, employer, employers' organization, person or employee who has agreed to the settlement has not complied with the terms of the settlement shall be deemed to be a complaint under subsection (1). R.S.O. 1970, c. 232, s. 79 (6); 1975, c. 76, s. 21 (2). Effect of settlement

90. For the purposes of section 80 and any complaint made under section 89, "person" includes any person otherwise excluded by subsection 1 (3). R.S.O. 1970, c. 232, s. 80. "Person" defined for purposes of ss. 80, 89

91.—(1) The Board may inquire into a complaint that a trade union or council of trade unions, or an officer, official or agent of a trade union or council of trade unions, was or is requiring an employer or an employers' organization to assign Jurisdictional disputes

particular work to persons in a particular trade union or in a particular trade, craft or class rather than to persons in another trade union or in another trade, craft or class, or that an employer was or is assigning work to persons in a particular trade union rather than to persons in another trade union, and it shall direct what action, if any, the employer, the employers' organization, the trade union or the council of trade unions or any officer, official or agent of any of them or any person shall do or refrain from doing with respect to the assignment of work.

Scope of
Board's
direction

(2) The Board may in any direction made under subsection (1) provide that it shall be binding on the parties for other jobs then in existence or undertaken in the future in such geographic area as the Board considers advisable.

Notice to
jurisdictional
representa-
tives

(3) Where a trade union, council of trade unions, employer or employers' organization referred to in subsection 136 (1) files a complaint under subsection (1) and if each party affected by the complaint has designated a jurisdictional representative as provided under section 136, the Registrar of the Board or such other person as may be designated by the chairman shall immediately notify the respective designated jurisdictional representatives by telephone and telegram of the filing of the complaint.

Meeting of
jurisdictional
representa-
tives

(4) The designated jurisdictional representatives involved shall forthwith meet and endeavour to effect a settlement of the matters complained of and shall report the results of their endeavours to the Board within fourteen days from the day of the filing of the complaint.

Filing of
settlement
with Board

(5) Where the designated jurisdictional representatives unanimously agree to a settlement of the matter complained of, it shall be reduced to writing, signed by the respective representatives and filed with the Board within the time set by subsection (4).

Filing of
settlement
in S.C.O.

(6) Where a settlement is filed with the Board under subsection (5), the Board, after such consultation with the designated jurisdictional representatives as it considers advisable in order to clarify the terms of the settlement, shall embody the settlement and any agreed to changes necessary for its clarification in the form of a direction under subsection (1) and shall file it in the prescribed form in the office of the Registrar of the Supreme Court, whereupon the direction shall be entered in the same way as a judgment or order of that court.

(7) Where the designated jurisdictional representatives are notified under subsection (3), the Board shall not, except as provided in subsection (8), proceed with the inquiry referred to in subsection (1) until the expiry of the fourteen-day period referred to in subsection (4). Time of inquiry

(8) Where a complaint is made under subsection (1) and the complainant alleges that a strike is imminent or is taking place by reason of the requirement as to the assignment of work or by reason of the assignment of work, the Board may, after consulting any employer, employers' organization, trade union or council of trade unions that in its opinion is concerned, make such interim order with respect to the assignment of the work as it in its discretion considers proper. Interim order in case of strike

(9) The Board may in an interim order or direction or at any time after the making of such interim order or direction direct any person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents to cease and desist from doing anything intended or likely to interfere with the terms of an interim order or direction respecting the assignment of work. Cease and desist directions

(10) The Board shall file in the office of the Registrar of the Supreme Court a copy of an interim order or direction made under this section, exclusive of the reasons therefor, in the prescribed form, whereupon the interim order or direction shall be entered in the same way as a judgment or order of that court. Filing in S.C.O.

(11) After an interim order or a direction has been entered, it is enforceable by a person, employee, employer, employers' organization, trade union or council of trade unions affected as a judgment or order of the Supreme Court on the day next after the day fixed for compliance in the interim order or direction. Enforcement

(12) A complaint made under this section may be withdrawn by the complainant only upon such terms and conditions as the Board may fix. Withdrawal of complaint

(13) Where a trade union or a council of trade unions and an employer or an employers' organization have made an arrangement to resolve any differences between them arising from the assignment of work, the Board may, upon such terms and conditions as it may fix, postpone inquiring into a complaint under this section until the difference has been dealt with in accordance with such arrangement. Postponement of inquiry

Where no
complaint
may be
made

(14) The Board shall not inquire into a complaint made by a trade union, council of trade unions, employer or employers' organization that has entered into a collective agreement that contains a provision requiring the reference of any difference between them arising out of work assignment to a tribunal mutually selected by them with respect to any difference as to work assignment that can be resolved under the collective agreement, and such trade union, council of trade unions, employer or employers' organization shall do or abstain from doing anything required of it by the decision of such tribunal.

Alteration
of bargain-
ing unit

(15) The Board may in its discretion, or at any time following the release of its direction, alter the bargaining unit determined in a certificate or defined in a collective agreement as it considers proper, and the certificate or agreement, as the case may be, shall be deemed to have been altered accordingly.

Idem

(16) The Board may, upon the application of any person, employer, trade union, council of trade unions or employers' organization affected by a decision of a tribunal referred to in subsection (14), alter the bargaining unit determined in a certificate or defined in a collective agreement as it considers proper to enable the parties to conform to the decision of the tribunal, and the certificate or agreement, as the case may be, shall be deemed to have been altered accordingly.

Interim
orders and
directions
prevail

(17) Where the Board has made an interim order or a direction under this section, the person, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents affected by the interim order or the direction may comply with it notwithstanding any provision of this Act or of any collective agreement relating to the assignment of the work to which the interim order or the direction relates, and the person, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents so complying shall be deemed not to have violated any provision of this Act or of any collective agreement.

Alteration
of descrip-
tion of
bargaining
unit in
conflicting
agreements

(18) Where an employer is a party to or is bound by two or more collective agreements and it appears that the description of the bargaining unit in one of such agreements conflicts with the description of the bargaining unit in the other or another of such agreements, the Board may, upon the application of the employer or any of the trade unions concerned, alter the description of the bargaining units in any such agreement as it considers proper, and the agreement or agreements shall be deemed to have been altered accordingly.

(19) Before disposing of an application under this section, the Board may make such inquiry, may require the production of such evidence and the doing of such things, or may hold such representation votes, as it considers appropriate. R.S.O. 1970, c. 232, s. 81.

Powers of Board before disposing of application

92. Where, on the complaint of a trade union, council of trade unions, employer or employers' organization, the Board is satisfied that a trade union or council of trade unions called or authorized or threatened to call or authorize an unlawful strike or that an officer, official or agent of a trade union or council of trade unions counselled or procured or supported or encouraged an unlawful strike or threatened to engage in an unlawful strike or that employees engaged in or threatened to engage in an unlawful strike, the Board may so declare and, in addition, in its discretion, it may direct what action if any a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful strike or the threat of an unlawful strike. 1975, c. 76, s. 22, *part*.

Declaration and direction by Board in respect of unlawful strike

93. Where, on the complaint of a trade union, council of trade unions, employer or employers' organization, the Board is satisfied that an employer or employers organization called or authorized or threatened to call or authorize an unlawful lock-out or locked out or threatened to lock out employees or that an officer, official or agent of an employer or employers' organization counselled or procured or supported or encouraged an unlawful lock-out or threatened an unlawful lock-out, the Board may so declare and, in addition, in its discretion, it may direct what action if any a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful lock-out or the threat of an unlawful lock-out. 1975, c. 76, s. 22, *part*.

Declaration and direction by Board in respect of unlawful lock-out

94. The Board shall file in the office of the Registrar of the Supreme Court a copy of a direction made under section 92 or 93, exclusive of the reasons therefor, whereupon the direction shall be entered in the same way as a judgment or order of that court and is enforceable as such. 1975, c. 76, s. 22, *part*.

Enforcement of direction by Supreme Court

95.—(1) Where the Board declares that a trade union or council of trade unions has called or authorized an unlawful strike or that an employer or employers' organization has called or authorized an unlawful lock-out and no collective agreement is in operation between the trade union or council

Notice of claim for damages after unlawful strike or lock-out where no collective agreement

of trade unions and the employer or employers' organization, as the case may be, the trade union or council of trade unions or employer or employers' organization may, within fifteen days of the release of the Board's declaration, but not thereafter, notify the employer or employers' organization or trade union or council of trade unions, as the case may be, in writing of its intention to claim damages for the unlawful strike or lock-out, and the notice shall contain the name of its appointee to an arbitration board.

Appointment
of arbitration
board

(2) The recipient of the notice shall within five days inform the sender of the notice of the name of its appointee to the arbitration board.

Idem

(3) The two appointees so selected shall, within five days of the appointment of the second of them, appoint a third person who shall be the chairman.

Idem

(4) If the recipient of the notice fails to name an appointee, or if the two appointees fail to agree upon a chairman within the time limited, the appointment shall be made by the Minister upon the request of either party.

Decision of
arbitration
board

(5) The arbitration board shall hear and determine the claim for damages including any question as to whether the claim is arbitrable and shall issue a decision and the decision is final and binding upon the parties to the arbitration, and,

(a) in the case of a council of trade unions, upon the members of affiliates of the council who are affected by the decision; and

(b) in the case of an employers' organization, upon the employers in the organization who are affected by the decision.

Idem

(6) The decision of a majority is the decision of the arbitration board, but if there is no majority the decision of the chairman governs.

Remunera-
tion of
members of
board

(7) The chairman and members of the arbitration board under this section shall be paid remuneration and expenses at the same rate as is payable to a chairman and members of a conciliation board under this Act, and the parties to the arbitration are jointly and severally liable for the payment of such fees and expenses.

Procedure
of board

(8) In an arbitration under this section, subsections 44 (5), (7), (8), (11) and (12) apply with necessary modifications. R.S.O. 1970, c. 232, s. 84.

96.—(1) Every person, trade union, council of trade unions or employers' organization that contravenes any provision of this Act or of any decision, determination, interim order, order, direction, declaration or ruling made under this Act is guilty of an offence and on conviction is liable, Offences

(a) if an individual, to a fine of not more than \$1,000;
or

(b) if a corporation, trade union, council of trade unions or employers' organization, to a fine of not more than \$10,000.

(2) Each day that a person, trade union, council of trade unions or employers' organization contravenes any provision of this Act or of any decision, determination, interim order, order, direction, declaration or ruling made under this Act constitutes a separate offence. Continued offences

(3) Every fine recovered for an offence under this Act shall be paid to the Treasurer of Ontario and shall form part of the Consolidated Revenue Fund. R.S.O. 1970, c. 232, s. 85. Disposition of fines

97. An information in respect of a contravention of this Act may be for one or more offences and no information, warrant, conviction or other proceedings in any such prosecution is objectionable or insufficient by reason of the fact that it relates to two or more offences. R.S.O. 1970, c. 232, s. 86. Information may be in respect of one or more offences

98. If a corporation, trade union, council of trade unions or employers' organization is guilty of an offence under this Act, every officer, official or agent thereof who assented to the commission of the offence shall be deemed to be a party to and guilty of the offence. R.S.O. 1970, c. 232, s. 87. Parties

99.—(1) A prosecution for an offence under this Act may be instituted against a trade union or council of trade unions or employers' organization in the name of the union, council or organization. Style of prosecution

(2) Any act or thing done or omitted by an officer, official or agent of a trade union or council of trade unions or employers' organization within the scope of his authority to act on behalf of the union, council or organization shall be deemed to be an act or thing done or omitted by the union, council or organization. R.S.O. 1970, c. 232, s. 88. Vicarious responsibility

Proceedings
in S.C.O.

100. Where a trade union, a council of trade unions or an unincorporated employers' organization is affected by a determination of the Board under section 89, an interim order or direction of the Board under section 91 or a direction of the Board under section 92, 93 or 135 or a decision of an arbitrator or arbitration board including a decision under section 95, proceedings to enforce the determination, interim order, direction or decision may be instituted in the Supreme Court by or against such union, council or organization in the name of the union, council or organization, as the case may be. R.S.O. 1970, c. 232, s. 89; 1975, c. 76, s. 23.

Consent

101.—(1) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Board.

Information

(2) An application for consent to institute a prosecution for an offence under this Act may be made *inter alia* by a trade union, a council of trade unions, a corporation or an employers' organization, and, if the consent is given by the Board, the information may be laid *inter alia* by any officer, official or member of the trade union, council of trade unions, corporation or employers' organization. R.S.O. 1970, c. 232, s. 90.

ADMINISTRATION

Board,
continued

102.—(1) The Ontario Labour Relations Board is continued.

composition
and appoint-
ment

(2) The Board shall be composed of a chairman, one or more vice-chairmen and as many members equal in number representative of employers and employees respectively as the Lieutenant Governor in Council considers proper, all of whom shall be appointed by the Lieutenant Governor in Council.

alternate
chairman

(3) The Lieutenant Governor in Council shall designate one of the vice-chairmen to be the alternate chairman.

divisions

(4) The chairman or, in the case of his absence from the office of the Board or his inability to act, the alternate chairman shall from time to time assign the members of the Board to its various divisions and may change any such assignment at any time.

construction
industry
division

(5) One of the divisions of the Board shall be designated by the chairman as the construction industry division, and it shall exercise the powers of the Board under this Act in proceedings to which sections 117 to 136 apply, but nothing

in this subsection impairs the authority of any other division to exercise such powers.

(6) Vacancies in the membership of the Board from any ^{vacancies} cause may be filled by the Lieutenant Governor in Council.

(7) Where a member of the Board resigns, he may carry ^{resignation of member} out and complete any duties or responsibilities and exercise any powers that he would have had if he had not ceased to be a member, in connection with any matter in respect of which there was any proceeding in which he participated as a member of the Board.

(8) Each member of the Board shall, before entering ^{oath of office} upon his duties, take and subscribe before the Clerk of the Executive Council and file in his office an oath of office in the following form:

I do solemnly swear that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of chairman, (or vice-chairman, or member) of the Ontario Labour Relations Board and I will not, except in the discharge of my duties, disclose to any person any of the evidence or any other matter brought before the Board. So help me God.

(9) The chairman or a vice-chairman, one member ^{quorum} representative of employers and one member representative of employees constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Board.

(10) The Board may sit in two or more divisions ^{may sit in divisions} simultaneously so long as a quorum of the Board is present in each division.

(11) The decision of the majority of the members of the ^{decisions} Board present and constituting a quorum is the decision of the Board, but, if there is no majority, the decision of the chairman or vice-chairman governs. R.S.O. 1970, c. 232, s. 91 (1-11).

(12) Notwithstanding subsections (9), (10) and (11), and where ^{when chairman or vice-chairman may sit alone} in his opinion it is advisable to do so, the chairman, or in the case of his absence or inability to act, the alternate chairman, may sit alone to hear and determine or may authorize a vice-chairman to sit alone to hear and determine any application, request, complaint, matter or thing in respect of section 68 or 69 or section 92, 93 or 135, and to exercise all of the jurisdiction and powers of the Board when so sitting. 1975, c. 76, s. 24.

practice
and
procedure,
etc.

(13) The Board shall determine its own practice and procedure but shall give full opportunity to the parties to any proceedings to present their evidence and to make their submissions, and the Board may, subject to the approval of the Lieutenant Governor in Council, make rules governing its practice and procedure and the exercise of its powers and prescribing such forms as are considered advisable.

rules
applicable to
construction
industry

(14) The Board may, subject to the approval of the Lieutenant Governor in Council, make rules to expedite proceedings before the Board to which sections 117 to 136 apply, and such rules may provide that, for the purposes of determining the merits of an application for certification to which sections 117 to 119 apply, the Board shall make or cause to be made such examination of records and such other inquiries as it considers necessary, but the Board need not hold a hearing on such an application.

registrar,
etc.

(15) The Lieutenant Governor in Council may appoint a registrar, such other officers and such clerks and servants as are required for the purposes of the Board and they shall exercise such powers and perform such duties as are conferred or imposed upon them by the Board.

remunera-
tion

(16) The members, the other officers and the clerks and servants of the Board shall be paid such remuneration as the Lieutenant Governor in Council may determine.

seal

(17) The Board shall have an official seal.

office;
sittings

(18) The office of the Board shall be in Toronto, but the Board may sit at such other places as it considers expedient. R.S.O. 1970, c. 232, s. 91 (12-17).

Powers and
duties of
Board,
general

103.—(1) The Board shall exercise such powers and perform such duties as are conferred or imposed upon it by or under this Act.

specific

(2) Without limiting the generality of subsection (1), the Board has power,

(a) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to produce such documents and things as the Board considers requisite to the full investigation and consideration of matters within its jurisdiction in the same manner as a court of record in civil cases;

(b) to administer oaths;

- (c) to accept such oral or written evidence as it in its discretion considers proper, whether admissible in a court of law or not;
- (d) to require persons or trade unions, whether or not they are parties to proceedings before the Board, to post and to keep posted upon their premises in a conspicuous place or places, where they are most likely to come to the attention of all persons concerned, any notices that the Board considers necessary to bring to the attention of such persons in connection with any proceedings before the Board;
- (e) to enter any premises where work is being or has been done by the employees or in which the employer carries on business, whether or not the premises are those of the employer, and inspect and view any work, material, machinery, appliance or article therein, and interrogate any person respecting any matter and post therein any notice referred to in clause (d);
- (f) to enter upon the premises of employers and conduct representation votes during working hours and give such directions in connection with the vote as it considers necessary;
- (g) to authorize any person to do anything that the Board may do under clauses (a) to (f) and to report to the Board thereon;
- (h) to authorize the chairman or a vice-chairman to inquire into any application, request, complaint, matter or thing within the jurisdiction of the Board, or any part of any of them, and to report to the Board thereon;
- (i) to bar an unsuccessful applicant for any period not exceeding ten months from the date of the dismissal of the unsuccessful application, or to refuse to entertain a new application by an unsuccessful applicant or by any of the employees affected by an unsuccessful application or by any person or trade union representing such employees within any period not exceeding ten months from the date of the dismissal of the unsuccessful application;

- (j) to determine the form in which and the time as of which evidence of membership in a trade union or of objection by employees to certification of a trade union or of signification by employees that they no longer wish to be represented by a trade union shall be presented to the Board on an application for certification or for a declaration terminating bargaining rights, and to refuse to accept any evidence of membership or objection or signification that is not presented in the form and as of the time so determined;
- (k) to determine the form in which and the time as of which evidence of representation by an employers' organization or of objection by employers to accreditation of an employers' organization or of signification by employers that they no longer wish to be represented by an employers' organization shall be presented to the Board in an application for accreditation or for a declaration terminating bargaining rights of an employers' organization and to refuse to accept any evidence of representation or objection or signification that is not presented in the form and as of the time so determined.

Subsequent applications for certification, etc.

(3) Notwithstanding sections 5 and 57, where an application has been made for certification of a trade union as bargaining agent for employees in a bargaining unit or for a declaration that the trade union no longer represents the employees in a bargaining unit and a final decision of the application has not been issued by the Board at the time a subsequent application for such certification or for such a declaration is made with respect to any of the employees affected by the original application, the Board may,

- (a) treat the subsequent application as having been made on the date of the making of the original application;
- (b) postpone consideration of the subsequent application until a final decision has been issued on the original application and thereafter consider the subsequent application but subject to any final decision issued by the Board on the original application; or
- (c) refuse to entertain the subsequent application.

Determination of union membership

(4) Where the Board is satisfied that a trade union has an established practice of admitting persons to membership without regard to the eligibility requirements of its charter,

constitution or by-laws, the Board, in determining whether a person is a member of a trade union, need not have regard for such eligibility requirements.

(5) Where the Board determines that a representation vote is to be taken amongst the employees in a bargaining unit or voting constituency, the Board may hold such additional representation votes as it considers necessary to determine the true wishes of the employees. Additional votes

(6) Where, in the taking of a representation vote, the Board determines that the employees are to be given a choice between two or more trade unions, Idem

(a) the Board may include on a ballot a choice indicating that an employee does not wish to be represented by a trade union; and

(b) the Board, when it decides to hold such additional representation votes as may be necessary, may eliminate from the choice on the ballot the choice from the previous ballot that has obtained the lowest number of votes cast. R.S.O. 1970, c. 232, s. 92.

104. Where in any proceedings before the Board the Board is satisfied that a *bona fide* mistake has been made with the result that the proper person or trade union has not been named as a party or has been incorrectly named, the Board may order the proper person or trade union to be substituted or added as a party to the proceedings or to be correctly named upon such terms as appear to the Board to be just. R.S.O. 1970, c. 232, s. 93. Mistakes in names of parties

105. Where in any proceeding under this Act the Board has found or finds that an organization of employees is a trade union within the meaning of clause 1 (1) (*p*), such finding is *prima facie* evidence in any subsequent proceeding under this Act that the organization of employees is a trade union for the purposes of this Act. R.S.O. 1970, c. 232, s. 94. Proof of status of trade union

106.—(1) The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law that arise in any matter before it, and the action or decision of the Board thereon is final and conclusive for all purposes, but nevertheless the Board may at any time, if it considers it advisable to do so, reconsider any decision, order, direction, declaration or ruling made by it and vary or revoke any such decision, order, direction, declaration or ruling. Jurisdiction

Idem

(2) If, in the course of bargaining for a collective agreement or during the period of operation of a collective agreement, a question arises as to whether a person is an employee or as to whether a person is a guard, the question may be referred to the Board and the decision of the Board thereon is final and conclusive for all purposes.

Findings
of hearing-
officer
conclusive

(3) Where the Board has authorized the chairman or a vice-chairman to make an inquiry under clause 103 (2) (*h*), his findings and conclusions on facts are final and conclusive for all purposes, but nevertheless he may, if he considers it advisable to do so, reconsider his findings and conclusions on facts and vary or revoke any such finding or conclusion. R.S.O. 1970, c. 232, s. 95.

Reference of
questions

107.—(1) Where a request is made under section 16, subsection 44 (4) or subsection 45 (1), the Minister may refer to the Board any question that arises that in his opinion relates to his authority to make an appointment under any such provision that is mentioned in the reference, and the Board shall report to the Minister its decision on the question. 1979, c. 32, s. 2.

Idem

(2) Where a question referred under subsection (1) involves an issue as to whether one trade union is the successor of another trade union or whether a business has been sold by one employer to another or where such question involves an issue under subsection 63 (11), the Board has the same powers and authority as it has under section 62 or 63, as the case may be, as if an application had been made thereunder, and the Board may issue such directions as to the conduct of the proceedings as it considers advisable. R.S.O. 1970, c. 232, s. 96 (2).

Board's
orders not
subject to
review

108. No decision, order, direction, declaration or ruling of the Board shall be questioned or reviewed in any court, and no order shall be made or process entered, or proceedings taken in any court, whether by way of injunction, declaratory judgment, certiorari, mandamus, prohibition, quo warranto, or otherwise, to question, review, prohibit or restrain the Board or any of its proceedings. R.S.O. 1970, c. 232, s. 97.

Testimony
in civil suits,
etc.

109. Except with the consent of the Board, no member of the Board, nor its registrar, nor any of its other officers, nor any of its clerks or servants shall be required to give testimony in any civil suit or in any proceeding before the Board or in any proceeding before any other tribunal respecting information obtained in the discharge of their duties

or while acting within the scope of their employment under this Act. 1975, c. 76, s. 25.

110. The production in a court of a document purporting to be or to contain a copy of a decision, determination, report, interim order, order, direction, declaration or ruling of the Board, a conciliation board, a mediator, an arbitrator or an arbitration board and purporting to be signed by a member of the Board or its registrar, the chairman of the conciliation board, the mediator, the arbitrator or the chairman of the arbitration board, as the case may be, is *prima facie* proof of such document without proof of the appointment, authority or signature of the person who signed the document. R.S.O. 1970, c. 232, s. 99.

Docu-
mentary
evidence

GENERAL

111.—(1) The records of a trade union relating to membership or any records that may disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union produced in a proceeding before the Board is for the exclusive use of the Board and its officers and shall not, except with the consent of the Board, be disclosed, and no person shall, except with the consent of the Board, be compelled to disclose whether a person is or is not a member of a trade union or does or does not desire to be represented by a trade union. R.S.O. 1970, c. 232, s. 100 (1).

Secrecy as
to union
membership

(2) No information or material furnished to or received by a conciliation officer or a mediator,

Non-
disclosure

(a) under this Act; or

(b) in the course of any endeavour that a conciliation officer may make under the direction of the Minister to effect a collective agreement after the Minister,

(i) has released the report of a conciliation board or a mediator, or

(ii) has informed the parties that he does not consider it advisable to appoint a conciliation board,

shall be disclosed except to the Minister, the Deputy Minister of Labour or the chief conciliation officer of the Ministry of Labour. R.S.O. 1970, c. 232, s. 100 (2); 1972, c. 1, s. 1.

Idem

(3) No report of a conciliation officer shall be disclosed except to the Minister, the Deputy Minister of Labour or the chief conciliation officer of the Ministry of Labour. R.S.O. 1970, c. 232, s. 100 (3); 1972, c. 1, s. 1.

Competency
as witness

(4) The Minister, the Deputy Minister of Labour, the chief conciliation officer of the Ministry of Labour or any conciliation officer or mediator appointed under this Act or any person designated by the Minister to endeavour to effect a collective agreement is not a competent or compellable witness in proceedings before a court or other tribunal respecting any information, material or report mentioned in subsection (2) or (3), or respecting any information or material furnished to or received by him, or any statement made to or by him in an endeavour to effect a collective agreement. R.S.O. 1970, c. 232, s. 100 (4); 1972, c. 1, s. 1.

Idem

(5) The chairman or any other member of a conciliation board is not a competent or compellable witness in proceedings before a court or other tribunal respecting,

(a) any information or material furnished to or received by him;

(b) any evidence or representation submitted to him; or

(c) any statement made by him,

in the course of his duties under this Act. R.S.O. 1970, c. 232, s. 100 (5).

Secrecy of
information
given labour
relations
officers

(6) No information or material furnished to or received by a labour relations officer under this Act and no report of a labour relations officer shall be disclosed except to the Board or as authorized by the Board, and no member of the Board and no labour relations officer is a competent or compellable witness in proceedings before a court, the Board or other tribunal respecting any such information, material or report. 1975, c. 76, s. 26.

Delegation
of Minister's
powers to
Deputy
Minister

112. Where an appointment, order or direction is required to be made under this Act by the Minister, he may authorize the Deputy Minister of Labour to make the appointment, order or direction, and a document purporting to be or to contain a copy of such an appointment, order or direction purporting to be signed by the Minister or by the Deputy Minister shall be accepted by any court as evidence of the appointment, order or direction. R.S.O. 1970, c. 232, s. 101.

113.—(1) For the purposes of this Act and of any ^{Mailed notices} proceedings taken under it, any notice or communication sent through Her Majesty's mails shall be presumed, unless the contrary is proved, to have been received by the addressee in the ordinary course of mail.

(2) An application for certification or accreditation or for a declaration that a trade union or employers' organization no longer represents the employees or employers, as the case may be, in a bargaining unit, if sent by registered mail addressed to the Board at Toronto, shall be deemed to have been made on the date on which it was so mailed. ^{Time of making certain applications}

(3) A decision, determination, report, interim order, order, ^{Time of release of documents} direction, declaration or ruling of the Board, a notice from the Minister that he does not consider it advisable to appoint a conciliation board, a notice from the Minister of a report of a conciliation board or of a mediator, or a decision of an arbitrator or of an arbitration board,

(a) if sent by mail to the person, employers' organization, trade union or council of trade unions concerned addressed to him or it at his or its last-known address, shall be deemed to have been released on the second day after the day on which it was so mailed; or

(b) if delivered to a person, employers' organization, trade union or council of trade unions concerned at his or its last-known address, shall be deemed to have been released on the day next after the day on which it was so delivered. R.S.O. 1970, c. 232, s. 102 (1-3).

(4) Proof by a person, employers' organization, trade ^{Failure to receive documents a defence} union or council of trade unions of failure to receive a determination under section 89 or an interim order or direction under section 91 or a direction of the Board under section 92, 93 or 135, or a decision of an arbitrator or of an arbitration board including a decision under section 95 sent by mail to such person, employers' organization, trade union or council of trade unions addressed to him or it at his or its last-known address is a defence by such person, employers' organization, trade union or council of trade unions to an application for consent to institute a prosecution or to any proceedings to enforce as a judgment or order of the Supreme Court such determination, interim order, direction or decision. R.S.O. 1970, c. 232, s. 102 (4); 1975, c. 76, s. 27.

Second
notice of
desire to
bargain

(5) Where a notice has been given under section 53 by registered mail and the addressee claims that he or it has not received the notice, the person, employers' organization, trade union or council of trade unions that gave the notice may give a second notice to the addressee forthwith after he or it ascertains that the first notice had not been received, but in no case may the second notice be given more than three months after the day on which the first notice was mailed, and the second notice has the same force and effect for the purposes of this Act as the first notice would have had if it had been received by the addressee. R.S.O. 1970, c. 232, s. 102 (5).

Defects
in form,
technical
irregularities

114. No proceedings under this Act are invalid by reason of any defect of form or any technical irregularity and no such proceedings shall be quashed or set aside if no substantial wrong or miscarriage of justice has occurred. R.S.O. 1970, c. 232, s. 103.

Adminis-
tration
cost

115. The expenses incurred in the administration of this Act shall be paid out of the moneys that are appropriated by the Legislature for the purpose. R.S.O. 1970, c. 232, s. 104.

Regulations

116. The Lieutenant Governor in Council may make regulations,

- (a) providing for and regulating the engagement of experts, investigators and other assistants by conciliation boards;
- (b) governing the assignment of arbitrators to conduct arbitrations and the carrying out and completion of such assignments;
- (c) providing for and prescribing a scale of fees and expenses allowable to arbitrators in respect of arbitrations and limiting or restricting the application of such a regulation;
- (d) providing a procedure for the review and determination of disputes concerning the fees and expenses charged or claimed by an arbitrator;
- (e) respecting the filing of schedules of fees and expenses by arbitrators;
- (f) respecting training programs for arbitrators;

- (g) providing for and fixing the remuneration and expenses of chairmen and other members of conciliation boards and mediators;
- (h) governing the conduct of arbitration hearings and prescribing procedures therefor;
- (i) requiring the filing with the Ministry of Labour of awards of arbitrators and arbitration boards;
- (j) prescribing amounts for the expense of proceedings under section 124 and providing for the adjustment of such amounts in exceptional circumstances;
- (k) prescribing forms and providing for their use, including the form in which the documents mentioned in sections 44, 89, 91, 94, 95 and 135 shall be filed in the Supreme Court;
- (l) respecting any matter necessary or advisable to carry out the intent and purpose of this Act.
R.S.O. 1970, c. 232, s. 105; 1972, c. 1, s. 1;
1975, c. 76, s. 28; 1979, c. 32, s. 3.

CONSTRUCTION INDUSTRY

117. In this section and in sections 118 to 136,

Interpre-
tation

- (a) “council of trade unions” means a council that is formed for the purpose of representing or that according to established bargaining practice represents trade unions as defined in clause (f);
- (b) “employee” includes an employee engaged in whole or in part in off-site work but who is commonly associated in his work or bargaining with on-site employees;
- (c) “employer” means a person who operates a business in the construction industry, and for purposes of an application for accreditation means an employer for whose employees a trade union or council of trade unions affected by the application has bargaining rights in a particular geographic area and sector or areas or sectors or parts thereof;
- (d) “employers’ organization” means an organization that is formed for the purpose of representing or represents employers as defined in clause (c);

(e) "sector" means a division of the construction industry as determined by work characteristics and includes the industrial, commercial and institutional sector, the residential sector, the sewers and water-mains sector, the roads sector, the heavy engineering sector, the pipeline sector and the electrical power systems sector ;

(f) "trade union" means a trade union that according to established trade union practice pertains to the construction industry. R.S.O. 1970, c. 232, s. 106; 1975, c. 76, s. 29.

Conflict

118. Where there is conflict between any provision in sections 119 to 136 and any provision in sections 5 to 57 and 62 to 116, the provisions in sections 119 to 136 prevail. R.S.O. 1970, c. 232, s. 107.

**Bargaining
units in the
construction
industry**

119.—(1) Where a trade union applies for certification as bargaining agent of the employees of an employer, the Board shall determine the unit of employees that is appropriate for collective bargaining by reference to a geographic area and it shall not confine the unit to a particular project.

**Determina-
tion of
number of
members in
bargaining
unit**

(2) In determining whether a trade union to which subsection (1) applies has met the requirements of subsection 7 (2), the Board need not have regard to any increase in the number of employees in the bargaining unit after the application was made. R.S.O. 1970, c. 232, s. 108.

**Notice of
desire to
bargain**

120.—(1) Where notice has been given by a trade union to an employer under section 14 or by a trade union or a council of trade unions or an employer or employers' organization under section 53, the parties shall meet within five days from the giving of such notice or within such further period as the parties agree upon.

**Extension
of 14-day
period for
conciliation
officer's
report**

(2) Where the Minister appoints a conciliation officer or a mediator at the request of a trade union, council of trade unions or an employer or employers' organization to confer with the parties and endeavour to effect a collective agreement binding upon employees of the employer or upon employees of members of the employers' organization, the period mentioned in subsection 18 (1) may be extended only by agreement of the parties.

**Appointment
of con-
ciliation
board**

(3) Where the Minister has appointed a conciliation officer under subsection (2) and the conciliation officer is unable to effect a collective agreement within the time allowed, the

Minister shall, unless the parties inform him in writing that they desire him to appoint a conciliation board, forthwith by notice in writing inform each of the parties that he does not consider it advisable to appoint a conciliation board.

(4) Where a conciliation board has been appointed under subsection (3), it shall report its findings and recommendations to the Minister within fourteen days after its first sitting, but such period may be extended, When report to be made

(a) for a further period not exceeding thirty days by agreement of the parties; or

(b) for such further period beyond the period fixed in clause (a) as the parties may agree upon and as the Minister may approve. R.S.O. 1970, c. 232, s. 109.

121. An agreement in writing between an employer or employers' organization, on the one hand, and a trade union that has been certified as bargaining agent for a unit of employees of the employer, or a trade union or a council of trade unions that is entitled to require the employer or the employers' organization to bargain with it for the renewal, with or without modifications, of the agreement then in operation or for the making of a new agreement, on the other hand, shall be deemed to be a collective agreement notwithstanding that there were no employees in the bargaining unit or units affected at the time the agreement was entered into. R.S.O. 1970, c. 232, s. 110. What deemed to be a collective agreement

122. Each party to a collective agreement between an employer or employers' organization and a trade union or council of trade unions may, within the period of ninety days before the agreement ceases to operate, give notice in writing to the other party of its desire to bargain with a view to the renewal, with or without modifications, of the agreement then in operation or to the making of a new agreement, and any such notice has for all purposes the same effect as a notice under section 53. R.S.O. 1970, c. 232, s. 111. Notice of desire to bargain for new collective agreement

123.—(1) If a trade union does not make a collective agreement with the employer within six months after its certification, any of the employees in the bargaining unit determined in the certificate may apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit. Application for termination, no agreement

(2) Notwithstanding subsection 57 (2), any of the employees in the bargaining unit defined in a first agreement between an Agreement

employer and a trade union, where the trade union has not been certified as the bargaining agent of the employees of the employer in the bargaining unit, may apply to the Board for a declaration that the trade union no longer represents the employees in the bargaining unit after the 305th day of its operation and before the 365th day of its operation.

Application
of s. 57,
subss. (3-6)

(3) Subsections 57 (3) to (6) apply to an application under subsection (1) or (2). R.S.O. 1970, c. 232, s. 112.

Referral of
grievance
to Board

124.—(1) Notwithstanding the grievance and arbitration provisions in a collective agreement or deemed to be included in a collective agreement under section 44, a party to a collective agreement between an employer or employers' organization and a trade union or council of trade unions may refer a grievance concerning the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable, to the Board for final and binding determination. 1975, c. 76, s. 30, *part*; 1977, c. 31, s. 2.

Hearing

(2) A referral under subsection (1) may be made in writing in the prescribed form by a party at any time after delivery of the written grievance to the other party, and the Board shall appoint a date for and hold a hearing within fourteen days after receipt of the referral and may appoint a labour relations officer to confer with the parties and endeavour to effect a settlement before the hearing.

Jurisdiction
of Board

(3) Upon a referral under subsection (1), the Board has exclusive jurisdiction to hear and determine the difference or allegation raised in the grievance referred to it, including any question as to whether the matter is arbitrable, and the provisions of subsections 44 (6), (8), (9), (10), (11) and (12) apply with necessary modifications to the Board and to the enforcement of the decision of the Board.

Expense

(4) The expense of proceedings under this section, in the amount fixed by the regulations, shall be jointly paid by the parties to the Board for payment into the Consolidated Revenue Fund. 1975, c. 76, s. 30, *part*.

Accredita-
tion of
employers'
organization

125. Where a trade union or council of trade unions has been certified or has been granted voluntary recognition under section 16 as the bargaining agent for a unit of employees of more than one employer in the construction industry or where a trade union or council of trade unions has entered into collective agreements with more than one employer covering a unit of employees in the construction industry,

an employers' organization may apply to the Board to be accredited as the bargaining agent for all employers in a particular sector of the industry and in the geographic area described in the said certificates, voluntary recognition documents or collective agreements, as the case may be. R.S.O. 1970, c. 232, s. 113.

126.—(1) Upon an application for accreditation, the Board shall determine the unit of employers that is appropriate for collective bargaining in a particular geographic area and sector, but the Board need not confine the unit to one geographic area or sector but may, if it considers it advisable, combine areas or sectors or both or parts thereof.

Board to
determine
appropriate-
ness of unit

(2) The unit of employers shall comprise all employers as defined in clause 117 (c) in the geographic area and sector determined by the Board to be appropriate. R.S.O. 1970, c. 232, s. 114.

Idem

127.—(1) Upon an application for accreditation, the Board shall ascertain,

Determina-
tions by
Board

(a) the number of employers in the unit of employers on the date of the making of the application who have within one year prior to such date had employees in their employ for whom the trade union or council of trade unions has bargaining rights in the geographic area and sector determined by the Board to be appropriate;

(b) the number of employers in clause (a) represented by the employers' organization on the date of the making of the application; and

(c) the number of employees of employers in clause (a) on the payroll of each such employer for the weekly payroll period immediately preceding the date of the application or if, in the opinion of the Board, such payroll period is unsatisfactory for any one or more of the employers in clause (a), such other weekly payroll period for any one or more of the said employers as the Board considers advisable.

(2) If the Board is satisfied,

Accredita-
tion

(a) that a majority of the employers in clause (1) (a) is represented by the employers' organization; and

(b) that such majority of employers employed a majority of the employees in clause (1) (c),

the Board, subject to subsection (3), shall accredit the employers' organization as the bargaining agent of the employers in the unit of employers and for such other employers for whose employees the trade union or council of trade unions may, after the date of the making of the application, obtain bargaining rights through certification or voluntary recognition in the appropriate geographic area and sector.

Authority
of employers'
organization

(3) Before accrediting an employers' organization under subsection (2), the Board shall satisfy itself that the employers' organization is a properly constituted organization and that each of the employers whom it represents has vested appropriate authority in the organization to enable it to discharge the responsibilities of an accredited bargaining agent.

Idem

(4) Where the Board is of the opinion that appropriate authority has not been vested in the employers' organization, the Board may postpone disposition of the application to enable employers represented by the organization to vest such additional or other authority in the organization as the Board considers necessary. R.S.O. 1970, c. 232, s. 115 (1-4).

What
employers'
organization
not to be
accredited

(5) The Board shall not accredit any employers' organization if any trade union or council of trade unions has participated in its formation or administration or has contributed financial or other support to it or if it discriminates against any person because of his race, creed, colour, nationality, ancestry, age, sex or place of origin. R.S.O. 1970, c. 232, s. 115 (5); 1975, c. 76, s. 31.

Effect of
accreditation

128.—(1) Upon accreditation, all rights, duties and obligations under this Act of employers for whom the accredited employers' organization is or becomes the bargaining agent apply with necessary modifications to the accredited employers' organization.

Effect of
accreditation
on collective
agreements

(2) Upon accreditation, any collective agreement in operation between the trade union or council of trade unions and any employer in clause 127 (1) (a) is binding on the parties thereto only for the remainder of the term of operation of the agreement, regardless of any provision therein respecting its renewal.

Idem

(3) When any collective agreement mentioned in subsection (2) ceases to operate, the employer shall thereupon be bound

by any collective agreement then in existence between the trade union or council of trade unions and the accredited employers' organization or subsequently entered into by the said parties.

(4) Where, after the date of the making of an application ^{Idem} for accreditation, the trade union or council of trade unions obtains bargaining rights for the employees of an employer through certification or voluntary recognition, that employer is bound by any collective agreement in existence at the time of the certification or voluntary recognition between the trade union or council of trade unions and the applicant employers' organization or subsequently entered into by the said parties.

(5) A collective agreement between a trade union or council ^{Idem} of trade unions and an employer who, but for the one-year requirement, would have been included in clause 127 (1) (a) is binding on the parties thereto only for the remainder of the term of operation of the agreement regardless of any provisions therein respecting its renewal.

(6) Where any collective agreement mentioned in subsection ^{Idem} (5) ceases to operate, the employer shall thereupon be bound by any collective agreement then in existence between the trade union or council of trade unions and the accredited employers' organization or subsequently entered into by the said parties.

(7) Where, under the provisions of this section, an ^{Application of s. 52, subss. (1)} employer becomes bound by a collective agreement between a trade union or council of trade unions and an accredited employers' organization after the said agreement has commenced to operate, the agreement ceases to be binding on the employer in accordance with the terms thereof, notwithstanding subsection 52 (1). R.S.O. 1970, c. 232, s. 116.

129.—(1) Subsections 51 (1) and (2) do not apply to an ^{Application of s. 51, subss. (1), (2)} accredited employers' organization.

(2) A collective agreement between an accredited ^{Binding effect of collective agreement on employer} employers' organization and a trade union or council of trade unions is, subject to and for the purposes of this Act, binding upon the accredited employers' organization and the trade union or council of trade unions, as the case may be, and upon each employer in the unit of employers represented by the accredited employers' organiz-

ation at the time the agreement was entered into and upon such other employers as may subsequently be bound by the said agreement, as if it was made between each of such employers and the trade union or council of trade unions and, if any such employer ceases to be represented by the accredited employers' organization during the term of operation of the agreement, the employer shall, for the remainder of the term of operation of the agreement, be deemed to be a party to a like agreement with the trade union or council of trade unions.

Binding
effect of
collective
agreement
on employees

(3) A collective agreement between an accredited employers' organization and a trade union or council of trade unions is binding on the employees in the bargaining unit defined in the agreement of any employer bound by the collective agreement. R.S.O. 1970, c. 232, s. 117.

Termination
of accred-
itation

130.—(1) If an accredited employers' organization does not make a collective agreement with the trade union or council of trade unions, as the case may be, within one year after its accreditation, any of the employers in the unit of employers determined in the accreditation certificate may apply to the Board only during the two months following the said one year for a declaration that the accredited employers' organization no longer represents the employers in the unit of employers.

Idem

(2) Any of the employers in the unit of employers defined in a collective agreement between an accredited employers' organization and a trade union or council of trade unions, as the case may be, may apply to the Board only during the last two months of its operation for a declaration that the accredited employers' organization no longer represents the employers in the unit of employers.

Determina-
tion by
Board

(3) Upon an application under subsection (1) or (2), the Board shall ascertain,

- (a) the number of employers in the unit of employers on the date of the making of the application;
- (b) the number of employers in the unit of employers who, within the two-month period immediately preceding the date of the making of the application, have voluntarily signified in writing that they no longer wish to be represented by the accredited employers' organization; and
- (c) the number of employees affected by the application of employers in the unit of employers on the

payroll of each such employer for the weekly payroll period immediately preceding the date of the making of the application or if, in the opinion of the Board, such payroll period is unsatisfactory for any one or more of the employers in clause (a), such other weekly payroll period for any one or more of the said employers as the Board considers advisable.

(4) If the Board is satisfied,

Declaration
by Board

(a) that a majority of the employers in clause (3) (a) has voluntarily signified in writing that they no longer wish to be represented by the accredited employers' organization; and

(b) that such majority of employers employed a majority of the employees in clause (3) (c),

the Board shall declare that the employers' organization that was accredited or that was or is a party to the collective agreement, as the case may be, no longer represents the employers in the unit of employers.

(5) Upon an application under subsection (1) or (2), when the employers' organization informs the Board that it does not desire to continue to represent the employers in the unit of employers, the Board may declare that the employers' organization no longer represents the employers in the unit.

Declaration
of termina-
tion on
abandon-
ment

(6) Upon the Board making a declaration under subsection (4) or (5),

Effect of
declaration

(a) any collective agreement in operation between the trade union or council of trade unions and the employers' organization that is binding upon the employers in the unit of employers ceases to operate forthwith;

(b) all rights, duties and obligations under this Act of the employers' organization revert with necessary modifications to the individual employers represented by the employers' organization; and

(c) the trade union or council of trade unions, as the case may be, is entitled to give to any employer in the unit of employers a written notice of its desire to bargain with a view to making a collective agreement, and such notice has the same effect

as a notice under section 14. R.S.O. 1970, c. 232, s. 118.

Individual bargaining prohibited

131.—(1) No trade union or council of trade unions that has bargaining rights for employees of employers represented by an accredited employers' organization and no such employer or person acting on behalf of such employer, trade union or council of trade unions shall, so long as the accredited employers' organization continues to be entitled to represent the employers in a unit of employers, bargain with each other with respect to such employees or enter into a collective agreement designed or intended to be binding upon such employees and if any such agreement is entered into it is void.

Agreements to provide employees during lawful strike or lock-out prohibited.

(2) No trade union or council of trade unions that has bargaining rights for employees of employers represented by an accredited employers' organization and no such employer or person acting on behalf of the employer, trade union or council of trade unions shall, so long as the accredited employers' organization continues to be entitled to represent the employers in a unit of employers, enter into any agreement or understanding, oral or written, that provides for the supply of employees during a legal strike or lock-out, and if any such agreement or understanding is entered into it is void and no such trade union or council of trade unions or person shall supply such employees to the employer.

Saving

(3) Nothing in this Act prohibits an employer, represented by an accredited employers' organization, from continuing or attempting to continue his operations during a strike or lock-out involving employees of employers represented by the accredited employers' organization. R.S.O. 1970, c. 232, s. 119.

Duty of fair representation by employers' organization

132. An accredited employers' organization, so long as it continues to be entitled to represent employers in a unit of employers, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employers in the unit, whether members of the accredited employers' organization or not. R.S.O. 1970, c. 232, s. 120.

Membership in employers' organization

133. Membership in an accredited employers' organization shall not be denied or terminated except for cause which, in the opinion of the Board, is fair and reasonable. R.S.O. 1970, c. 232, s. 121.

Fees

134. An accredited employers' organization shall not charge, levy or prescribe initiation fees, dues or assessments

that, in the opinion of the Board, are unreasonable or discriminatory. R.S.O. 1970, c. 232, s. 122.

135.—(1) Where on the complaint of an interested person, trade union, council of trade unions or employers' organization the Board is satisfied that a trade union or council of trade unions called or authorized or threatened to call or authorize an unlawful strike or that an officer, official or agent of a trade union or council of trade unions counselled or procured or supported or encouraged an unlawful strike or threatened an unlawful strike, or that employees engaged in or threatened to engage in an unlawful strike, it may direct what action if any a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful strike or the threat of an unlawful strike.

Direction by
Board re
unlawful
strike

(2) Where on the complaint of an interested person, trade union, council of trade unions or employers' organization the Board is satisfied that an employer or employers' organization called or authorized or threatened to call or authorize an unlawful lock-out or locked out or threatened to lock out employees or that an officer, official or agent of an employer or employers' organization counselled or procured or supported or encouraged an unlawful lock-out or threatened an unlawful lock-out, it may direct what action if any a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful lock-out or the threat of an unlawful lock-out. R.S.O. 1970, c. 232, s. 123 (1, 2).

Direction by
Board re
unlawful
lock-out

(3) The Board shall file in the office of the Registrar of the Supreme Court a copy of a direction made under this section, exclusive of the reasons therefor, in the prescribed form, whereupon the direction shall be entered in the same way as a judgment or order of that court and is enforceable as such. R.S.O. 1970, c. 232, s. 123 (3); 1975, c. 76, s. 32.

Enforcement
of direction
by S.C.O.

136.—(1) Every trade union, council of trade unions, employer and employers' organization in the construction industry shall, within fifteen days after it has entered into a collective agreement, file with the Board a notice in the prescribed form giving the name and address of a person resident in Ontario who is authorized by the trade union, council of trade unions, employer or employers' organization to act as a designated jurisdictional representative in the event of a dispute as to the assignment of work.

Designation
of
jurisdictional
representa-
tive

Idem

(2) Whenever a trade union, council of trade unions, employer or employers' organization changes the authorization referred to in subsection (1), it shall file with the Board notice thereof in the prescribed form within fifteen days after making such change.

Idem

(3) Where a trade union, council of trade unions, employer or employers' organization files a complaint under subsection 91 (1) and it has not complied with subsection (1) or (2), it shall file the required notice with the complaint. R.S.O. 1970, c. 232, s. 124.

PROVINCE-WIDE BARGAINING

Interpre-
tation

137.—(1) In this section and in sections 138 to 151,

- (a) “affiliated bargaining agent” means a bargaining agent that, according to established trade union practice in the construction industry, represents employees who commonly bargain separately and apart from other employees and is subordinate or directly related to, or is, a provincial, national or international trade union, and includes an employee bargaining agency;
- (b) “bargaining”, except when used in reference to an affiliated bargaining agent, means province-wide, multi-employer bargaining in the industrial, commercial and institutional sector of the construction industry referred to in clause 117 (e);
- (c) “employee bargaining agency” means an organization of affiliated bargaining agents that are subordinate or directly related to the same provincial, national or international trade union, and that may include the parent or related provincial, national or international trade union, formed for purposes that include the representation of affiliated bargaining agents in bargaining and which may be a single provincial, national or international trade union;
- (d) “employer bargaining agency” means an employers' organization or group of employers' organizations formed for purposes that include the representation of employers in bargaining;
- (e) “provincial agreement” means an agreement in writing covering the whole of the Province of

Ontario between a designated or accredited employer bargaining agency that represents employers, on the one hand, and a designated or certified employee bargaining agency that represents affiliated bargaining agents, on the other hand, containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer bargaining agency, the employers represented by the employer bargaining agency and for whose employees the affiliated bargaining agents hold bargaining rights, the affiliated bargaining agents represented by the employee bargaining agency, or the employees represented by the affiliated bargaining agents and employed in the industrial, commercial and institutional sector of the construction industry referred to in clause 117 (e). 1977, c. 31, s. 3, *part*.

(2) Where an employer is represented by a designated or accredited employer bargaining agency, the employer shall be deemed to have recognized all of the affiliated bargaining agents represented by a designated or certified employee bargaining agency that bargains with the employer bargaining agency as the bargaining agents for the purpose of collective bargaining in their respective geographic jurisdictions in respect of the employees of the employer employed in the industrial, commercial or institutional sector of the construction industry referred to in clause 117 (e), except those employees for whom a trade union other than one of the affiliated bargaining agents holds bargaining rights. 1979, c. 113, s. 1.

Deemed recognition of affiliated bargaining agents

138. Where there is conflict between any provision in sections 139 to 151 and any provision in sections 5 to 57 and 62 to 136, the provisions in sections 139 to 151 prevail. 1977, c. 31, s. 3, *part*.

Conflict

139.—(1) The Minister may, upon such terms and conditions as the Minister considers appropriate,

Designation by Minister

- (a) designate employee bargaining agencies to represent in bargaining provincial units of affiliated bargaining agents, and describe those provincial units;
- (b) notwithstanding an accreditation of an employers' organization as the bargaining agent of employers, designate employer bargaining agencies to represent in bargaining provincial units of employers for whose employees affiliated bargaining agents hold bargaining rights, and describe those provincial units.

Exclusion
of certain
bargaining
relation-
ships

(2) Where affiliated bargaining agents that are subordinate or directly related to different provincial, national or international trade unions bargain as a council of trade unions with a single employer bargaining agency for a province-wide collective agreement, the Minister may exclude such bargaining relationships from the designations made under subsection (1), and subsection 146 (2) shall not apply to such exclusion.

Minister
may convene
conference

(3) Where a designation is not made by the Minister of an employee bargaining agency or an employer bargaining agency under subsection (1) within sixty days after the 27th day of October, 1977, the Minister may convene a conference of trade unions, councils of trade unions, employers and employers' organizations, as the case may be, for the purpose of obtaining recommendations with respect to the making of a designation.

Reference of
question

(4) The Minister may refer to the Board any question that arises concerning a designation, or any terms or conditions therein, and the Board shall report to the Minister its decision on the question.

Minister
may alter,
etc.,
designation

(5) Subject to sections 140 and 141, the Minister may alter, revoke or amend any designation from time to time and may make another designation.

R.S.O. 1980,
c. 446 does
not apply

(6) The *Regulations Act* does not apply to a designation made under subsection (1). 1977, c. 31, s. 3, *part*.

Application
to Board
by employee
bargaining
agency

140.—(1) During the period between the one hundred and twentieth and the one hundred and eightieth days prior to the termination of a provincial agreement, an employee bargaining agency, whether designated or not, may apply to the Board to be certified to represent in bargaining a provincial unit of affiliated bargaining agents.

Certification
by Board

(2) Where the Board is satisfied that a majority of the affiliated bargaining agents falling within the provincial unit is represented by the employee bargaining agency and that such majority of affiliated bargaining agents holds bargaining rights for a majority of employees that would be bound by a provincial agreement, the Board shall certify the employee bargaining agency. 1977, c. 31, s. 3, *part*.

Application
to Board
by employer
bargaining
agency

141.—(1) During the period between the one hundred and twentieth and the one hundred and eightieth days prior to the termination of a provincial agreement, an employer bargaining agency, whether designated or not, may apply to the Board to be accredited to represent in

bargaining a provincial unit of employers for whose employees affiliated bargaining agents hold bargaining rights.

(2) Where the Board is satisfied that a majority of employers falling within the provincial unit is represented by the employer bargaining agency and that such majority of employers employ a majority of the employees for whom the affiliated bargaining agents hold bargaining rights, the Board shall accredit the employer bargaining agency. 1977, c. 31, s. 3, *part*. Accreditation by Board

142. Where an employee bargaining agency has been designated under section 139 or certified under section 140 to represent a provincial unit of affiliated bargaining agents, all rights, duties and obligations under this Act of the affiliated bargaining agents for which it bargains shall vest in the employee bargaining agency, but only for the purpose of conducting bargaining and, subject to the ratification procedures of the employee bargaining agency, concluding a provincial agreement. 1977, c. 31, s. 3, *part*. Employee bargaining agencies, vesting of rights, etc.

143. Where an employer bargaining agency has been designated under section 139 or accredited under section 141 to represent a provincial unit of employers, Employer bargaining agencies, vesting of rights, etc.

(a) all rights, duties and obligations under this Act of employers for which it bargains shall vest in the employer bargaining agency, but only for the purpose of conducting bargaining and concluding a provincial agreement; and

(b) an accreditation heretofore made under section 127 of an employers' organization as bargaining agent of the employers in the industrial, commercial and institutional sector of the construction industry referred to in clause 117 (e) represented or to be represented by the employer bargaining agency is null and void from the time of such designation under section 139 or accreditation under section 141. 1977, c. 31, s. 3, *part*.

144.—(1) An application for certification as bargaining agent which relates to the industrial, commercial and institutional sector of the construction industry referred to in clause 117 (e) shall be brought by either, Application for certification in the industrial, commercial and institutional sector

(a) an employee bargaining agency; or

(b) one or more affiliated bargaining agents of the employee bargaining agency,

on behalf of all affiliated bargaining agents of the employee bargaining agency and the unit of employees shall include all employees who would be bound by a provincial agreement together with all other employees in at least one appropriate geographic area unless bargaining rights for such geographic area have already been acquired under subsection (3) or by voluntary recognition.

Certification

(2) If on the taking of a representation vote more than 50 per cent of the ballots cast are cast in favour of the trade unions on whose behalf the application is brought, or, if the Board is satisfied that more than 55 per cent of the employees in the bargaining unit are members of the trade unions on whose behalf the application is brought, the Board shall certify the trade unions as the bargaining agent of the employees in the bargaining unit and in so doing shall issue a certificate confined to the industrial, commercial and institutional sector and issue another certificate in relation to all other sectors in the appropriate geographic area or areas.

Saving

(3) Notwithstanding subsection 119 (1), a trade union represented by an employee bargaining agency may bring an application for certification in relation to a unit of employees employed in all sectors of a geographic area other than the industrial, commercial and institutional sector and the unit shall be deemed to be a unit of employees appropriate for collective bargaining.

Voluntary
recognition
agreements

(4) A voluntary recognition agreement in so far as it relates to the industrial, commercial and institutional sector of the construction industry shall be between an employer on the one hand and either,

- (a) an employee bargaining agency;
- (b) one or more affiliated bargaining agents represented by an employee bargaining agency; or
- (c) a council of trade unions on behalf of one or more affiliated bargaining agents affiliated with the council of trade unions,

on the other hand, and shall be deemed to be on behalf of all the affiliated bargaining agents of the employee bargaining agency and the defined bargaining unit in the agreement shall include those employees who would be bound by a provincial agreement.

Exception

(5) Notwithstanding subsections (1) and (4), a trade union that is not represented by a designated or certified employee bargaining agency may bring an application for certification or enter into a voluntary recognition agreement on its own behalf. 1980, c. 31, s. 1.

145.—(1) Subject to subsection (2), any collective agreement in operation on the 27th day of October, 1977 in respect of employees employed in the industrial, commercial and institutional sector of the construction industry referred to in clause 117 (e) and represented by affiliated bargaining agents is enforceable by and binding on the parties thereto only for the remainder of the term of operation of the agreement, regardless of any provision respecting its renewal. Termination
of collective
agreement

(2) Notwithstanding subsection 52 (1), every collective agreement in respect of employees employed in the industrial, commercial and institutional sector of the construction industry referred to in clause 117 (e) and represented by affiliated bargaining agents entered into after the 1st day of January, 1977 and before the 30th day of April, 1978 shall be deemed to expire not later than the 30th day of April, 1978, regardless of any provision respecting its term of operation or its renewal. Idem

(3) Where any collective agreement mentioned in subsection (1) ceases to operate, the affiliated bargaining agent, the employer and the employees for whom the affiliated bargaining agent holds bargaining rights shall be bound by the provincial agreement made between an employee bargaining agency representing the affiliated bargaining agent and the employer bargaining agency representing the employer. Provincial
agreement
binding

(4) After the 30th day of April, 1978, where an affiliated bargaining agent obtains bargaining rights through certification or voluntary recognition in respect of employees employed in the industrial, commercial and institutional sector of the construction industry referred to in clause 117 (e), the employer, the affiliated bargaining agent, and the employees for whom the affiliated bargaining agent has obtained bargaining rights are bound by the provincial agreement made between an employee bargaining agency representing the affiliated bargaining agent and an employer bargaining agency representing a provincial unit of employers in which the employer would have been included. Idem

(5) Notwithstanding subsection 52 (1), where, under the provisions of this section, an employer, affiliated bargaining agent or employees become bound by a provincial agreement after the agreement has commenced to operate, the agreement ceases to be binding on the employer, affiliated bargaining agent or employees in accordance with the terms thereof. 1977, c. 31, s. 3, *part*. When
provincial
agreement
ceases to
operate

146.—(1) An employee bargaining agency and an employer bargaining agency shall make only one provincial agreement for each provincial unit that it represents. Agency shall
make only
one
agreement

No agreement
other than
provincial
agreement

(2) On and after the 30th day of April, 1978 and subject to sections 139 and 145, no person, employee, trade union, council of trade unions, affiliated bargaining agent, employee bargaining agency, employer, employers' organization, group of employers' organizations or employer bargaining agency shall bargain for, attempt to bargain for, or conclude any collective agreement or other arrangement affecting employees represented by affiliated bargaining agents other than a provincial agreement as contemplated by subsection (1), and any collective agreement or other arrangement that does not comply with subsection (1) is null and void.

Expiry of
provincial
agreement

(3) Every provincial agreement shall provide for the expiry of the agreement on the 30th day of April calculated biennially from the 30th day of April, 1978. 1977, c. 31, s. 3, *part*.

Non-
application
of s. 51

147.—(1) Section 51 does not apply to a designated or accredited employer bargaining agency or a designated or certified employee bargaining agency. 1977, c. 31, s. 3, *part*.

Provincial
agreement
binding

(2) A provincial agreement is, subject to and for the purposes of this Act, binding upon the employer bargaining agency, the employers represented by the employer bargaining agency, the employee bargaining agency, the affiliated bargaining agents represented by the employee bargaining agency, the employees represented by the affiliated bargaining agents and employed in the industrial, commercial and institutional sector of the construction industry referred to in clause 117 (*e*), and upon such employers, affiliated bargaining agents and employees as may be subsequently bound by the said agreement. 1979, c. 113, s. 3.

Parties

(3) Any employee bargaining agency, affiliated bargaining agent, employer bargaining agency and employer bound by a provincial agreement shall be considered to be a party for the purposes of section 124. 1977, c. 31, s. 3, *part*.

Calling of
strikes

148.—(1) Where an employee bargaining agency desires to call or authorize a lawful strike, all of the affiliated bargaining agents it represents shall call or authorize the strike in respect of all the employees represented by all affiliated bargaining agents affected thereby in the industrial, commercial and institutional sector of the construction industry referred to in clause 117 (*e*), and no affiliated bargaining agent shall call or authorize a strike of such employees except in accordance with this subsection.

Calling of
lock-outs

(2) Where an employer bargaining agency desires to call or authorize a lawful lock-out, all employers it represents shall call or authorize the lock-out in respect of all employees employed by such employers and represented by all the affiliated bargaining agents affected thereby in the industrial, commercial and institu-

tional sector of the construction industry referred to in clause 117 (e) and no employer shall lock out such employees except in accordance with this subsection. 1979, c. 113, s. 4, *part*.

149.—(1) Where a memorandum of settlement of the terms of a provincial agreement is subject to ratification, the ratification shall take place within thirty days of the signing of the memorandum of settlement. Time for ratification

(2) Where ratification or rejection of a memorandum of settlement of the terms of a provincial agreement does not take place within the period of thirty days, the memorandum of settlement shall come into effect as though it had been ratified and shall constitute a provincial agreement. 1979, c. 113, s. 4, *part*. Effect of failure to ratify within prescribed time

150. The Board shall, upon the application of a trade union, a council of trade unions, or an employer or employers' organization, determine any question that arises as to whether work performed or to be performed by employees is within the industrial, commercial and institutional sector of the construction industry referred to in clause 117 (e). 1977, c. 31, s. 3, *part*. Power of Board

151.—(1) A designated or certified employee bargaining agency shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of the affiliated bargaining agents in the provincial unit of affiliated bargaining agents for which it bargains, whether members of the designated or certified employee bargaining agency or not and in the representation of employees, whether members of an affiliated bargaining agent or not. Bargaining agency not to act in bad faith, etc.

(2) A designated or accredited employer bargaining agency shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employers in the provincial unit of employers for which it bargains, whether members of the designated or accredited employer bargaining agency or not. 1977, c. 31, s. 3, *part*. Idem

CHAPTER 229

Lakes and Rivers Improvement Act

INTERPRETATION

1. In this Act,

Interpre-
tation

- (a) "dam" means a dam or other work forwarding, holding back or diverting water;
- (b) "Ministry" means the Ministry of Natural Resources;
- (c) "floating of timber" includes transmission of timber;
- (d) "lake" includes a pond;
- (e) "Minister" means the Minister of Natural Resources;
- (f) "regulations" means the regulations made under this Act;
- (g) "river" includes a creek and a stream;
- (h) "timber" includes rafts and crafts, saw logs, posts, ties, cordwood, pulpwood, masts, staves, deals, boards, and all sawed and manufactured lumber.
R.S.O. 1970, c. 233, s. 1; 1972, c. 4, s. 12.

GENERAL PROVISIONS

2. The purpose of this Act is to provide for the use of waters of the lakes and rivers of Ontario and to regulate improvements in them, and to provide for,

Exercise of
powers under
Act

- (a) the preservation and equitable exercise of public rights in or over such waters;
- (b) the protection of the interests of the riparian owners;
- (c) the use, management and perpetuation of the fish, wildlife and other natural resources dependent on such waters;

- (d) the preservation of the natural amenities of such waters and on the shores and banks thereof; and
- (e) ensuring the suitability of the location and nature of improvements in such waters, including their efficient and safe maintenance and operation and, having regard to matters referred to in clauses (a), (b), (c) and (d), their operation in a reasonable manner. 1971, c. 50, s. 50 (1).

Regulations

3.—(1) The Lieutenant Governor in Council may make regulations,

- (a) for the safe and orderly floating of timber down lakes and rivers, and for preventing the use of the lakes and rivers for navigation by vessels and boats being unnecessarily impeded or interfered with by the timber;
- (b) respecting generally the use under this Act of lakes and rivers and waters therein. R.S.O. 1970, c. 233, s. 2 (1); 1971, c. 50, s. 50 (2).

Scope of regulations

(2) The regulations may be general in their application, or be applicable to any particular Part of this Act or to any particular lake or river or to any particular dam or work. R.S.O. 1970, c. 233, s. 2 (2).

Penalty

(3) Every person who contravenes any provision of this Act or the regulations is guilty of an offence and on conviction is liable, where no other penalty is provided in this Act, to a fine of not more than \$5,000. 1971, c. 50, s. 50 (3).

Compliance with Part V

4. Every person making use of a lake or river upon which works are constructed under this or any other Act for the purpose of floating timber shall comply with the requirements of Part V as to timber driving. R.S.O. 1970, c. 233, s. 3.

Where R.S.O. 1980, c. 148 applies

5.—(1) The *Expropriations Act* applies where anything done under this Act constitutes an expropriation or injurious affection within the meaning of that Act.

Arbitrations

(2) Where under this Act a claim or dispute that does not constitute an expropriation or injurious affection is to be determined by arbitration, a judge of the county or district court of the county or district in which the claim or dispute arises or, in the case of a claim under Part V, in which the timber in connection with which the claim or part of the claim is made or the greater part of such timber

is situate at the time of the service of the notice of claim, shall be the sole arbitrator for such purpose and the *Arbitrations Act* otherwise applies. R.S.O. 1970, c. 233, s. 4.

6. Where land is overflowed or otherwise injured by the maintenance of a dam that was erected before the land was granted by the Crown and the grantee or any person under whom he derived title obtained a reduction in the price of the land on account of, or was otherwise indemnified for, its being overflowed or otherwise injured by the dam, no subsequent owner of the land is entitled to maintain an action against the owner or occupier of the dam for damages for any overflowing or injury to the land due to the continuance of the dam. R.S.O. 1970, c. 233, s. 5.

Where compensation for flooding or injury by dam made before grant from the Crown

7. Nothing in this Act authorizes any person to obstruct any waters already navigable or to collect tolls other than those upon timber. R.S.O. 1970, c. 233, s. 6.

Restrictions upon operations

8. If, by reason of a dam erected for the floating of timber, any water power is created, the owner of the dam does not have any title or claim to the use of such water power, but, if the owner or occupier of the adjoining land claims compensation for damages arising from such dam, the claim shall be determined by arbitration and the arbitrator may take into account the increased value of his land by reason of the water power so created. R.S.O. 1970, c. 233, s. 7.

Rights of parties as to water powers created

9.—(1) Any person heretofore or hereafter giving any approval or making any recommendation for approval authorized or required under this Act is not liable for any injury, including death, loss or other damage caused by or resulting from the giving of such approval or the making of such recommendation or the doing of or the failure to do any act in connection therewith. R.S.O. 1970, c. 233, s. 8.

No liability re approvals, etc.

(2) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by any agent or servant of the Crown to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (1) had not been enacted. 1971, c. 50, s. 50 (4).

Crown not relieved of liability
R.S.O. 1980, c. 393

10.—(1) Subject to subsection (2), where under this Act the approval of the Minister is required for any matter, or where under this Act the Minister is empowered to make an order directing the construction, repair, improvement or

Inquiry

removal of a dam in any lake or river or the doing of any other act or thing requiring the incurring of costs, the Minister shall, before refusing such an approval or making an order, give notice to the person seeking the approval or to the person to whom the proposed order will be directed of his intention to refuse the approval or to make the order, and if such person, within fifteen days of receipt of the notice, requests an inquiry, the Minister before refusing the approval or making the order shall cause an inquiry to be made under section 11.

Where order
necessary
without
hearing

(2) Where in the opinion of the Minister the making of an order referred to in subsection (1) is immediately necessary for the protection of persons from injury or property from damage or for the public safety and he so states in the order, the Minister may make such order without the holding of an inquiry. 1971, c. 50, s. 50 (5), *part*.

Appointment
of person to
hold inquiry

11.—(1) The Minister may appoint a person to hold an inquiry under section 10 and shall specify particulars of the inquiry and the person so appointed shall fix a time and place for the holding of the inquiry.

Notice of
inquiry

(2) The Minister and the person seeking the approval referred to in section 10 or to whom the proposed order referred to therein may be directed are parties to the inquiry, but any person having a direct interest in the subject-matter of the inquiry may notify the person holding the inquiry of his interest and become a party, and the person holding the inquiry may cause notice of the inquiry to be published or otherwise given in such manner as he considers reasonably adequate to inform all persons who may have direct interests in the subject-matter of the inquiry.

Notice of
grounds

(3) At least five days before the date fixed for the hearing, the Minister shall serve upon each other party to the inquiry a notice indicating the grounds upon which he intends to rely at the hearing and shall make available for inspection by the parties any documents, including maps and plans that the Minister proposes to use at the hearing.

Holding of
inquiry

(4) The person holding an inquiry under this section shall hold a hearing as to whether the refusal of approval or the proposed order is fair, sound and reasonably necessary for the achievement of the purposes of this Act.

Report of
inquiry

(5) A person holding an inquiry under this section shall report to the Minister pursuant to the inquiry giving a summary of the evidence and arguments advanced by the parties, his findings of fact and his opinion on the merits

of the granting of approval or of the proposed order with his reasons therefor, and shall furnish a copy of his report to the other parties.

(6) Sections 6 to 16 and 21 to 23 of the *Statutory Powers Procedure Act* apply with respect to a hearing under this section. Application of R.S.O. 1980, c. 484

(7) The Minister shall consider a report made to him under this section and may grant or refuse the requested approval or refrain from making or make the proposed order, with or without such modifications as he considers proper having regard to the report, and the Minister shall give reasons for his decision to the parties. 1971, c. 50, s. 50 (5), *part*. Decision of Minister

12. Upon the petition of a person who has been refused approval by the Minister of any matter or to whom an order is directed by the Minister after an inquiry under section 11 filed with the Clerk of the Executive Council within twenty-eight days after the date of the refusal or order, the Lieutenant Governor in Council may, Appeal

(a) confirm, vary or rescind the refusal or order; or

(b) require the Minister to cause a new inquiry to be held,

and the decision of the Minister after the new inquiry is not subject to petition under this section. 1971, c. 50, s. 50 (5), *part*.

PART I

CONSTRUCTION, REPAIR AND USE OF DAMS

13. In this Part,

Interpretation

(a) "engineer" means an engineer designated by the Minister;

(b) "owner" means an owner of a dam, and includes the person constructing, maintaining or operating it. R.S.O. 1970, c. 233, s. 9.

14.—(1) No person shall construct a dam on any lake or river, Approvals

(a) until the location of the dam has been approved in writing by the Minister; and

- (b) until the plan and specifications thereof have been approved in writing by the Minister.

Application
for approval
of location

(2) An application for approval of the location of a dam shall be made in writing to the Minister and shall be accompanied by,

- (a) a sketch showing the proposed location of the dam, the area to be flooded and the lands of persons other than the applicant that may be affected by the flooding;
- (b) a statement showing the purpose, size and type of the dam, whether the dam will be of a temporary or permanent nature and the quantity of water, if any, to be taken from the headpond; and
- (c) such other particulars as the Minister may require.
R.S.O. 1970, c. 233, s. 10 (1, 2).

Refusal of
approval
where
contrary to
purposes of
Act

(3) The Minister may refuse to give his approval under this section to the location of a dam where it appears to him that the construction of a dam at that location would be contrary to any of the purposes of this Act.
1971, c. 50, s. 50 (6).

Application
for approval
of plans, etc.

(4) When the location of a dam has been approved by the Minister, an application for approval of the plan and specifications of the dam may be made in writing to the Minister and shall be accompanied by,

- (a) three copies of the plan and specifications and a report showing full details of the construction of the sluiceways, spillways and other works connected with the dam and the height at which the water is to be held;
- (b) a map showing the location and size of the watershed above the dam, the extreme high water mark and the normal regulated water level;
- (c) particulars as to the nature of the bottom or foundation on which the dam is to be constructed with reports of all boring or test pits; and
- (d) such other particulars as the Minister may require.
R.S.O. 1970, c. 233, s. 10 (4).

Approval
of plans

(5) The Minister may approve the plan and specifications of a dam as submitted to him or may approve them with such alterations as he considers advisable having regard to

the purposes of this Act, and without limiting the generality of the foregoing, may require that the dam shall be provided with a fishway that will permit the free and unobstructed passage of fish. 1971, c. 50, s. 50 (7).

(6) Nothing in this section prevents or applies to the construction of an emergency dam where such construction is considered necessary for the prevention of loss or damage to property, but in such case the owner shall immediately give notice to the Minister that he is proceeding with the construction of the dam and shall thereafter comply with any directions of the Minister as to the precautions to be taken in maintaining the dam or its removal when the purpose for which it was constructed has been served. R.S.O. 1970, c. 233, s. 10 (6). ^{Exception}

15.—(1) Where a dam is under construction or has been constructed on a lake or river and the location or the plan and specifications thereof have not been approved by the Minister or an emergency dam has been constructed and the owner thereof has not given notice to the Minister under section 14, the Minister may appoint an officer or officers with such powers and duties as are considered expedient to be in charge of the lake or river or any works or improvements thereon and to regulate the use of the lake or river or any works or improvements thereon in such manner as seems best calculated to afford to persons having conflicting interests on the lake or river a fair and reasonable use of the waters of the lake or river, but, where any alteration of the level of international boundary waters is involved, such regulation, powers and duties shall conform to any order or recommendation that the International Joint Commission may make under the terms and authority of the International Boundary Waters Treaty between Great Britain and the United States. R.S.O. 1970, c. 233, s. 11 (1). ^{Disputes as to user}

(2) The Minister may, where he considers it necessary for any of the purposes of this Act, order the owner of a dam to which subsection (1) applies to repair, reconstruct or remove the dam within the time specified in the order and, upon non-compliance with the order within the time limited, the Minister may repair, reconstruct or remove the dam to the extent that he considers it necessary to comply with the purposes of this Act, and the cost of any such work shall be a debt due by the owner to the Crown and is recoverable with costs in any court of competent jurisdiction. 1971, c. 50, s. 50 (8). ^{Order for repair, etc., of dam}

16. Where a dam has heretofore been or is hereafter constructed in a lake or river and it is proposed to make ^{Approval of plans}

improvements to the dam, the improvements shall not be proceeded with until complete copies of the plans and specifications have been approved by the Minister as being in accordance with the purposes of this Act. 1971, c. 50, s. 50 (9).

Requiring
production
of plans on
report of
engineer

17.—(1) Where a dam has heretofore been or is hereafter constructed in a lake or river and an engineer or other officer of the Ministry reports that by reason of the construction or condition of the dam water may be held, released or diverted in sufficient volume to cause personal injury or damage to property, the Minister may require the owner of the dam to furnish within a given time the plans and other particulars mentioned in subsection 14 (4). R.S.O. 1970, c. 233, s. 13 (1); 1972, c. 1, s. 1.

Failure to
furnish plans

(2) Upon failure on the part of the owner to furnish plans and other particulars required under subsection (1) within the time specified, the Minister may require the engineer to make an examination and report on the dam, and the expenses incurred in making the examination and report shall be a debt due by the owner to the Crown, and the amount thereof is recoverable with costs in any court of competent jurisdiction. 1971, c. 50, s. 50 (10).

Engineer
to have
free access

(3) For the purpose of making the report, the engineer shall have free access to all parts of the dam and to the adjoining or neighbouring lands and to all plans, books, accounts, documents and reports relating to the construction of the dam.

Order to
repair,
improve, etc.

(4) On the report of the engineer, the Minister may make such order as he considers necessary to ensure the safety of the public or of persons whose lands and property may be endangered by the dam, and for such purpose may order the owner to repair, improve, open up or remove it, and may fix the time within which such repairs, improvements, opening up or removal are to be completed. R.S.O. 1970, c. 233, s. 13 (3, 4).

Effect of
non-com-
pliance
with order

(5) Upon non-compliance with the order within the time limited or in case the Minister considers that the repairs, improvements, opening up or removal ordered is immediately required in an emergency, the Minister may repair, improve, open up or remove the dam in so far as he considers it necessary to ensure the safety of the public or of persons whose lands or property may be endangered by the dam, and the cost of any such work is a debt due by the owner to the Crown, and the amount thereof is recoverable with costs in any court of competent jurisdiction. 1971, c. 50, s. 50 (11).

(6) Where any dam heretofore constructed has not been provided with a fishway, the Minister may direct that the owner of the dam shall forthwith provide a fishway that will permit the free and unobstructed passage of fish up and down stream at any season of the year. R.S.O. 1970, c. 233, s. 13 (6). Direction for fishway to be provided

18.—(1) Where water has been impounded for power development or storage purposes, the Minister may order the owner of any dam that impounds the water, Clearing flooded areas

(a) to clear timber, slash or debris from the lands that are or were flooded; and

(b) to remove any timber, slash or debris that has escaped from the flooded lands to any lake or river,

within the time specified in the order. R.S.O. 1970, c. 233, s. 14 (1).

(2) Where the owner of a dam fails to comply with an order made under subsection (1) within the time specified in the order, the Minister may cause to be done whatever work is necessary to comply with the order, and the cost thereof is a debt due by the owner to the Crown and is recoverable with costs in any court of competent jurisdiction. 1971, c. 50, s. 50 (12). Non-compliance with order

19.—(1) The Minister may authorize the engineer to inspect or cause an inspection to be made of any dam or other structure or work for the development, improvement or utilization of the waters of any lake or river and report in writing upon the state of repair of the dam or other structure or work. R.S.O. 1970, c. 233, s. 15 (1). Minister may authorize inspection

(2) If the Minister considers it necessary or expedient for the purposes of this Act, he may, after the receipt of the report of the engineer, order the owner of the dam or other structure or work to repair, reconstruct or remove it to the extent necessary to comply with such purposes within the time specified in the order. Repair or reconstruction

(3) Where the owner fails to comply with an order made under this section within the time specified in the order, the Minister may expropriate the site of the dam or other structure or work and all rights or interest incidental thereto on behalf of the Crown, and the *Expropriations Act* applies to such expropriation. 1971, c. 50, s. 50 (13), *part*. Non-compliance with order

R.S.O. 1980,
c. 148

Offences

20.—(1) Every person who,

- (a) constructs or maintains a dam in contravention of this Part; or
- (b) hinders or obstructs the engineer or an officer, servant or agent employed by or under the direction of the Minister in the performance of his duties under this Part, or refuses or neglects to provide any plans, accounts, documents or report relating to the construction of a dam when required by such engineer, officer, servant or agent,

is guilty of an offence and on conviction is liable to a fine of not more than \$500, and if after conviction such default continues, such person is liable to a further fine of \$10 for each day upon which the default continues. R.S.O. 1970, c. 233, s. 16 (1); 1971, c. 50, s. 50 (14).

Liability not
affected by
conviction

(2) The conviction of a person under subsection (1) does not affect his liability for damages or otherwise either at common law or under any statute in force in Ontario. R.S.O. 1970, c. 233, s. 16 (2).

Plans, etc.,
to be kept
on file in
Ministry

21. All plans, orders and reports furnished or made under this Part shall be kept on file in the Ministry. R.S.O. 1970, c. 233, s. 17; 1972, c. 1, s. 1.

Disputes
as to user

22.—(1) Where the Minister considers it expedient for the purposes of this Act or where a conflict or dispute arises between persons having a right to use a lake or river or any works or other improvements thereon for floating timber or between such persons and any other persons having the right to use a lake or river for any other purpose, the Minister may appoint an officer or officers to be in charge of the lake or river or any works or improvements thereon and the Minister may, on the recommendation of such officer or officers, make orders to regulate the use of the lake or river or any works or improvements thereon in such manner as seems best calculated to afford to persons having diverse interests on the lake or river or in the works or improvements a fair and reasonable use of the waters of the lake or river, but where any alterations of the level of international boundary waters is involved, such orders shall conform to any order or recommendation that the International Joint Commission may make under the terms and authority of the International Boundary Waters Treaty between Great Britain and the United States.

(2) Every person who contravenes any order made under this section is guilty of an offence and on conviction is liable to a fine of not more than \$50 for each day that he contravenes the order. 1971, c. 50, s. 50 (15). Penalty

23.—(1) Where a dam or other structure or work has been heretofore or is hereafter constructed on a lake or river and the Minister considers it necessary or expedient for the purposes of this Act, he may order the owner of the dam or other structure or work to take such steps within the time specified in the order as may be necessary to maintain the level of the water of the lake or river or to raise or lower such level as the order provides. Regulation of water levels

(2) Where the owner fails to comply with an order made under this section within the time specified in the order, the Minister may cause to be taken such steps as are necessary to achieve the result intended by the order, and the cost thereof is a debt due by the owner to the Crown and is recoverable with costs in any court of competent jurisdiction. 1971, c. 50, s. 50 (16). Non-compliance with order

(3) This section does not apply to any lake or river over which the International Joint Commission established under the Boundary Waters Treaty of 1909 or any public authority exercising jurisdiction under the Parliament of Canada or The Lake of the Woods Control Board established under *The Lake of the Woods Control Board Act*, 1922 has jurisdiction with respect to the level of the water. R.S.O. 1970, c. 233, s. 19 (3). Where section not to apply

24. Subject to compensation being made as provided by the *Ministry of Government Services Act* for any damage sustained by reason thereof, the Minister may authorize any engineer, agent, workman or servant employed by or under him to enter into and upon any land and remove any rocks, stones, gravel, slab or timber jam, dam or part of any dam, rubbish of any kind or other obstruction in any lake or river, the removal of which he considers necessary or expedient for the achievement of any of the purposes of this Act. 1971, c. 50, s. 50 (17); 1973, c. 2, s. 2. Removal of obstructions
R.S.O. 1980, c. 279

25.—(1) A judge of the county or district court of the county or district in which any part of any works used for floating timber is situate, on the complaint of any person interested in the floating of timber down any lake or river, through or over the works upon which tolls are collected, that the works are clearly inadequate by reason of being out of repair, shall appoint an inspector to examine the works and to report on the state of repair thereof. Works out of repair

Order to
repair

(2) The judge shall, after report of the inspector, order the repairs that are necessary and that shall be made by the owner of the works, and the time by which the repairs shall be made and completed.

When
person
interested
may repair

(3) If the owner does not comply with the order, the person so interested may make the repairs, and the cost thereof, or such portion of them as the judge determines, shall be paid by the owner and is a lien and charge in favour of such person on the works and tolls.

Deposit to
cover fees

(4) The judge may require the applicant to deposit with the clerk of the court such sum as will, in the opinion of the judge, be sufficient to pay the fees and expenses of the inspector, to be allowed by the judge at a rate of not more than \$10 per day and actual travelling expenses, and such sum, when the works are found to be clearly inadequate by reason of being out of repair, may, in the discretion of the judge, be made a lien or charge in favour of the person paying the same on the works and tolls.

Bond to
cover costs

(5) The applicant shall, before the application comes on to be heard, file with the judge a bond signed by himself in the sum of \$100 and by two sufficient sureties, who shall duly qualify, each in the sum of \$50, conditioned to pay to the owner such costs connected with the application and subsequent proceedings as the owner may become entitled to.

Notice

(6) Four days notice of the application is sufficient and the notice may be served upon the owner, or, in the case of a company, upon the president, secretary or superintendent, manager or acting manager thereof.

Costs

(7) The costs incidental to the application shall be upon the county court or small claims court scale, as the judge may direct.

Interpre-
tation

(8) In this section, "inspector" means a person appointed by the Lieutenant Governor in Council to act as inspector of works constructed for the floating of timber. R.S.O. 1970, c. 233, s. 21.

Provision
for passage
of timber

26. Where a dam is now or is hereafter erected on or across any lake or river down which timber is usually floated, such dam shall at all times be provided with a slide or apron for the passage of timber of such description and dimensions as are approved by the Minister and such approval shall be deemed to be of an administrative and not of a legislative nature. R.S.O. 1970, c. 233, s. 22.

27. Every such apron shall be so constructed and maintained as to afford a depth of water sufficient to admit of the passage over it of such timber as is usually floated down the lake or river on which the dam is erected. R.S.O. 1970, c. 233, s. 23.

Apron to
admit of
timber
passing

28.—(1) The owner and occupier of a dam who does not provide, maintain and keep in repair a slide or apron thereto in accordance with such description and dimensions as are approved by the Minister under section 26 is guilty of an offence and on conviction is liable to a fine of \$50 for each day on which the default occurs or during which it continues.

Offence

(2) Where the apron is carried away, destroyed or damaged by flood or otherwise, the owner or occupier of the dam is not liable to the fine provided by subsection (1) if the apron is repaired or reconstructed as soon as the state of the lake or river safely permits. R.S.O. 1970, c. 233, s. 24.

Where
apron
carried away,
fine
suspended

29. The Minister, an engineer and every officer, servant or agent of the Minister has the right, while in the performance of his duties under this Act, to enter into and upon any lands and premises, other than a private dwelling, store, storehouse, office or farm building. R.S.O. 1970, c. 233, s. 25.

Right to
enter on
premises

PART II

PUBLIC RIGHTS IN LAKES AND RIVERS

30. This Part is subject to Part I. R.S.O. 1970, c. 233, s. 28.

Application

31.—(1) Subject to this Part, all persons may float timber down all lakes and rivers during the spring, summer and autumn freshets.

Right to
float timber

(2) No person shall, by felling trees or placing any other obstruction in or across a lake or river, prevent the floating of timber.

Duty not
to obstruct

(3) If it is necessary to remove an obstruction from a lake or river, or to construct a dam, apron, slide, gate, lock, boom or other work therein or thereon in order to

Right to
remove
obstructions
and to
construct
works

facilitate the floating of timber down the lake or river, the person requiring so to float the timber may remove the obstruction, and may construct the dam, apron, slide, gate, lock, boom or other work, doing no unnecessary damage to the lake or river or to its banks.

Right of
persons
driving
timber, etc.,
to go on
banks

(4) All persons driving timber down a lake or river have the right to go along the banks of the lake or river for the purpose of assisting and to assist the floating of the timber by all means usual with lumbermen, doing no unnecessary damage to the banks of the lake or river.

Duty of
persons
driving
timber

(5) All persons floating timber down a lake or river shall keep the timber under control and shall recover and remove from the lake or river any timber that drifts out of control or causes an obstruction or hazard in the lake or river. R.S.O. 1970, c. 233, s. 29 (1-5).

Removal of
timber
causing
obstruction

(6) Where the Minister considers it necessary or expedient for the purposes of this Act, he may order the owner of or the person who is responsible for driving any timber that has drifted out of control or that has caused an obstruction or hazard in a lake or river to recover and remove the timber within the time specified in the order and, in default thereof, the Minister may cause the timber to be recovered and removed, and the cost thereof is a debt due to the Crown by such owner or person and is recoverable with costs in any court of competent jurisdiction. 1971, c. 50, s. 50 (19).

Right of
public to use
works and
improve-
ments

32. A person who has constructed in or upon a lake or river, which was not navigable or floatable before the same was constructed, a dam, apron, slide, gate, lock, boom or other work necessary to facilitate the floating of timber down the lake or river, or blasts rocks or removes shoals or other impediments from or otherwise improves the floatability of the lake or river, does not have the exclusive right to the use of the lake or river or of the works or improvements, but all persons, subject to the payment of tolls fixed under Part IV, have the right during the spring, summer and autumn freshets to float timber down the lake or river and through and over such works and improvements, doing no unnecessary damage. R.S.O. 1970, c. 233, s. 30.

Act to apply
whether land
patented or
not

33. All the rights conferred by this Part extend and apply to all works and improvements heretofore or hereafter made, on a lake or river, whether the bed of the lake or river has been granted by the Crown or not. R.S.O. 1970, c. 233, s. 31.

34.—(1) Where the course of a river enters or widens into a lake or other considerable body of water, every person using the river for the purpose of floating timber shall provide proper and adequate means by a steam tug or otherwise to move his timber across the lake or body of water with expedition. Moving timber across lakes, etc.

(2) The Minister may by his order in writing direct the kind of power or appliance that is to be used in moving timber across the lake or body of water from the place of entrance to the outlet. Minister may order use of power

(3) Every person who contravenes or neglects to obey the terms of such an order is guilty of an offence and on conviction is liable to a fine of not more than \$500. R.S.O. 1970, c. 233, s. 32. Offence

OBSTRUCTIONS IN LAKES AND RIVERS

35.—(1) Every person who cuts and fells, and the employer of every person who cuts and fells, any tree into a lake or river down which timber is usually floated, or upon such parts of the banks of it as are usually overflowed in the spring, summer or autumn freshets, without lopping off the branches of the tree and cutting up the trunk into lengths of not more than 5.5 metres before the tree is allowed to be floated or cast into the lake or river is guilty of an offence and on conviction is liable to a fine of not more than \$10. R.S.O. 1970, c. 233, s. 33 (1); 1978, c. 87, s. 26. Fine for not lopping off branches of trees, etc.

(2) Subsection (1) does not apply to timber prepared for transportation to market. R.S.O. 1970, c. 233, s. 33 (2). Exception

36.—(1) Where any tree, part of a tree, refuse, substance or matter has been thrown or deposited in a lake or river or on the shores or banks thereof in such a manner as, in the opinion of the Minister, impairs the natural beauty of the lake or river, the Minister may order the person who committed or caused the commission of such act to take such steps within the time specified in the order as are necessary to remove the tree, part of a tree, refuse, substance or matter from the lake or river or from the shores or banks thereof. Throwing trees, etc., in lake prohibited

(2) Every person who fails to comply with an order under subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$50 for each day that he does not comply with the order. 1971, c. 50, s. 50 (20). Penalty

Interpre-
tation

37. In sections 38 and 39, "mill" means a plant or works in which logs or wood-bolts are processed, and includes a saw mill, a pulp mill, and a pulp and paper mill. R.S.O. 1970, c. 233, s. 35.

Prohibition
against
throwing
refuse into
lake or river,
etc.

38.—(1) No person shall throw, deposit or discharge, or permit the throwing, depositing or discharging of, any refuse, sawdust, chemical, substance or matter from any mill into a lake or river, or on the shores or banks thereof.

Offence

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than \$200. R.S.O. 1970, c. 233, s. 36 (1, 2).

Order to
cease
depositing
matter in
lake, etc.

(3) Where the Minister finds that any refuse, sawdust, chemical, substance or matter from a mill is being thrown, deposited or discharged into a lake or river or on the shores or banks thereof, the Minister may order the owner or occupier of the mill to cause such throwing, depositing or discharging to cease and may in addition order, where in his opinion it is practicable to do so, that such owner or occupier take such steps within the time specified in the order as may be necessary to remove the refuse, sawdust, chemical, substance or matter from the lake or river or from the shores or banks thereof.

Penalty

(4) Every owner or occupier who fails to comply with an order under subsection (3) is guilty of an offence and on conviction is liable to a fine of not more than \$50 for each day that he does not comply with the order. 1971, c. 50, s. 50 (21).

DISCRETIONARY POWER OF COURT

Discretion of
court as to
granting of
injunction in
certain cases

39.—(1) Where in an action or proceeding a person claims, and but for this section would be entitled to, an injunction against the owner or occupier of a mill for an injury or damage, direct or consequential, sustained by such person, or for any interference directly or indirectly with any rights of such person as riparian proprietor or otherwise, by reason or in consequence of the throwing, depositing or discharging, or permitting the throwing, depositing or discharging of any refuse, sawdust, chemical, substance or matter from the mill or from it and other mills into a lake or river, or by reason or in consequence of any odour arising from any such refuse, sawdust, chemical, substance or matter so thrown, deposited or discharged or so permitted to be thrown, deposited or discharged, the court or judge may,

- (a) refuse to grant an injunction if it is proved that having regard to all the circumstances and taking into consideration the importance of the operation of the mill to the locality in which it operates and the benefit and advantage, direct and consequential, which the operation of the mill confers on that locality and on the inhabitants of that locality, and weighing the same against the private injury, damage or interference complained of, it is on the whole proper and expedient not to grant the injunction; or
- (b) grant an injunction to take effect after such lapse of time or upon such terms and conditions or subject to such limitations or restrictions as are considered proper; or
- (c) in lieu of granting an injunction, direct that the owner or occupant of the mill take such measures or perform such acts to prevent, avoid, lessen or diminish the injury, damage or interference complained of as are considered proper.

(2) Nothing in subsection (1) affects any right of the person claiming the injunction to damages against the owner or occupier of the mill for any such injury, damage or interference. Right to damages not affected

(3) Where damage from the same cause continues, the person entitled to the damages may apply from time to time in the same action or proceeding for the assessment of subsequent damages or for any other relief to which by subsequent events he from time to time becomes entitled. Subsequent damages

(4) This section applies whether the injury, damage or interference is or is not a continuing one, and whether the person claiming the injunction in the action or proceeding is a plaintiff or is a defendant proceeding by way of counterclaim. R.S.O. 1970, c. 233, s. 37. Application of section

PART III

TIMBER SLIDE COMPANIES

40. In this Part,

Interpre-
tation

- (a) "charter" means letters patent of incorporation or articles of incorporation;
- (b) "works" means a dam, slide, pier, boom or other work constructed or proposed to be constructed

in or upon a lake or river in order to facilitate the floating of timber down the lake or river and any improvements made or proposed to be made to the floatability of a lake or river by the blasting of rocks or dredging or the removal of shoals or other impediments or otherwise. R.S.O. 1970, c. 233, s. 38.

Powers to
be granted to
companies

41. A company may be incorporated under the appropriate general legislation providing for incorporation for the purpose of acquiring or constructing and maintaining and operating works upon a lake or river in Ontario, and every such company thereupon becomes subject to this Part. R.S.O. 1970, c. 233, s. 39.

Application
for
incorpora-
tion

42. The application for incorporation shall give,

- (a) a detailed description of the works proposed to be undertaken and an estimate of their cost; and
- (b) an estimate from the best available sources of the quantity of different kinds of timber expected to come down the lake or river yearly after the works have been completed. R.S.O. 1970, c. 233, s. 40.

When charter
may be issued

43. The charter incorporating a company for any of the purposes mentioned in section 41 shall not be issued until proof has been furnished to the Minister,

- (a) that the proposed capital is sufficient to carry out the objects for which the company is to be incorporated, that such capital has been subscribed or underwritten and that the applicants are likely to command public trust and confidence in the undertaking; and
- (b) that notice of the application for the charter has been served upon all timber licensees and other persons known to be interested in the works proposed to be constructed,

nor until approval of the proposed work has been obtained under Part I, and the Minister has certified to the Minister issuing the charter that, in his opinion, it is proper that it should be issued. R.S.O. 1970, c. 233, s. 41.

Rate of
dividend

44. The charter may state a rate of dividend, not exceeding 12 per cent per annum, that the company may

pay to the shareholders if the revenues of the company otherwise justify such payment. R.S.O. 1970, c. 233, s. 42.

45. The existence of the company may be limited to a term of years, not exceeding twenty-one, to be fixed by the charter. R.S.O. 1970, c. 233, s. 43.

Limitation of company's existence

46. Upon the expiration of the period limited for the existence of the company, all the works constructed by it become the property of Her Majesty for the public uses of Ontario, and shall be under the control of the Ministry and the company, or the shareholders thereof, have no right to compensation therefor. R.S.O. 1970, c. 233, s. 44; 1972, c. 1, s. 1.

Property vests in the Crown on expiration of company's existence

47. Notwithstanding the expiration of the period limited for the existence of the company, it shall continue to exist for the purpose of taking such proceedings as may be requisite for winding up and settling its affairs, and for getting in its assets and distributing them among its shareholders, and the company may, for those purposes, sue and be sued as if the period of its corporate existence had not expired, but after such period the words "in liquidation" shall be added to the name of the company and are a part of its name. R.S.O. 1970, c. 233, s. 45.

Company's existence to continue for the purpose of winding up

48. No distribution of capital shall be made under section 47 until three years after the expiration of the period limited for the existence of the company, but this does not prevent the distribution among the shareholders of the annual profits received from investments, and after such three years section 146 of the *Business Corporations Act* does not apply. R.S.O. 1970, c. 233, s. 46.

Distribution of capital and profits

R.S.O. 1980, c. 54

49. The directors of a company formed under this Part shall annually, in the month of January, make to the Minister a report, verified by the oath of the treasurer of the company, specifying,

Yearly report to the Minister

- (a) the cost of the works;
- (b) the amount of all money expended;
- (c) the amount of the capital stock, and the amount paid in;
- (d) the whole amount of tolls expended on the works;
- (e) the amount received during the year from tolls and all other sources, stating each separately, and distinguishing the tolls on different kinds of timber;

- (f) the amount of dividends paid;
- (g) the amount expended for repairs;
- (h) the amount of the debts due by the company, stating the objects for which they were respectively incurred; and
- (i) a detailed description of any extension or improvement of the works or of any new works proposed to be undertaken in the following year, together with an estimate of the cost thereof. R.S.O. 1970, c. 233, s. 47.

Books of
account

50. The company shall keep proper books of account containing full and true statements of,

- (a) its financial transactions;
- (b) its assets;
- (c) the sums received and expended by it and the matters in respect of which the receipt or expenditure took place; and
- (d) its credits and liabilities,

and such books shall be at all times open to the inspection and examination of any shareholder. R.S.O. 1970, c. 233, s. 48.

Rights of
expropria-
tion

51. The company has the right to expropriate any land, right or easement requisite for the purpose of its undertaking. R.S.O. 1970, c. 233, s. 49.

Interference
with property
of others

52. No company formed under this Part shall construct its works over or upon or otherwise interfere with or injure any private property or the property of Her Majesty, without first having obtained the consent of the owner or occupier thereof, or of Her Majesty, except as is provided in this Part. R.S.O. 1970, c. 233, s. 50.

Compensation for
existing
works
taken over

53.—(1) If there is already established by any person, other than a company formed under this Part or under any Act of the Legislature, any works on a lake or river for the improvement of which a company is formed under this Part, such company may with the approval of the Minister take possession of the works, and the owners thereof, or, if the works have been constructed on the property of Her Majesty, the person at whose cost they have been constructed, is entitled to compensation for the value of the works, either in money or in stock of the company,

at the option of the owner or the person at whose cost the works were constructed, and may become a shareholder in the company for an amount equal to the value of the works, such value to be ascertained by arbitration.

(2) Where the company purchases or takes possession of the works and does not make or construct any works other than those so acquired, the company shall furnish the Minister with a detailed description of such works and the amount of the purchase price or compensation. R.S.O. 1970, c. 233, s. 51.

Formalities to be observed by company acquiring existing works

54.—(1) Nothing in this Act authorizes a company formed under this Part to take possession of or injure any mill site upon which there are existing mills or machinery, or hydraulic works other than those intended to facilitate the passage of timber, and no such company shall commence any work that interferes with or endangers such occupied mill site without the consent in writing of the owner, or unless it is determined by arbitration that the proposed works will not injure such mill site.

Mill sites, etc., not to be taken without consent of owner

(2) The consent or award shall be registered in the same manner as the instrument of incorporation of the company. R.S.O. 1970, c. 233, s. 52.

Registering consent or award

55.—(1) The company shall, within two years from its incorporation, complete every work undertaken by it and mentioned in the application for the charter, and for the completion of which the company is incorporated, in default of which the company is liable to forfeit the right to all the corporate and other powers and authority that it has acquired, and the Attorney General may cause proceedings to be taken in the name of Her Majesty to set aside the charter by serving notice upon the company, and the Lieutenant Governor in Council may, after an opportunity to be heard has been given to the company, declare that its corporate powers cease and determine at a date to be named in the order in council. R.S.O. 1970, c. 233, s. 53 (1); 1972, c. 1, s. 9 (7).

Time for completion of works

(2) From and after that date, all the corporate powers of the company cease and determine unless, prior to the taking of proceedings by the Attorney General, further time is granted by the Minister or the completion of the works appears to be unnecessary and is dispensed with by him. R.S.O. 1970, c. 233, s. 53 (2); 1972, c. 1, s. 9 (7).

Cessation of corporate powers

(3) If in the opinion of the Minister the company has abandoned for one year any works completed by it so that

Default in completing works

the works are not in sufficient repair and cannot be used for the purpose for which they were undertaken, the Minister may by his order in writing declare that the corporate powers of the company cease and determine to the extent set out in the order. R.S.O. 1970, c. 233, s. 53 (3).

When
companies
may be
united

56. Any two companies formed for the construction of works on contiguous waters may unite and form one consolidated company on such terms as to them seem meet, and the name of the company to be then assumed shall thenceforth be its corporate name, and letters patent may, subject to the approval of the Minister, be issued to it, and, when issued, the consolidated company may exercise and enjoy all the rights and is subject to all the liabilities of other companies formed under this Part, and which the separate companies had and enjoyed or were subject or liable to before their union. R.S.O. 1970, c. 233, s. 54.

Expropria-
tion of works
of company

57. The Minister may, with the approval of the Lieutenant Governor in Council, where the Lieutenant Governor in Council considers it expedient for the purposes of this Act, expropriate the works of any company formed under this Part. 1971, c. 50, s. 50 (22).

Articles may
limit term
of existence
of certain
companies
R.S.O. 1980,
c.54

58. Where a company incorporated under chapter 153 of the Revised Statutes of Ontario, 1877, or under chapter 68 of the Consolidated Statutes of Canada, 1859, applies for the issue of articles of incorporation under the *Business Corporations Act*, articles of incorporation may, subject to the approval of the Minister, be issued conferring upon the company any of the powers authorized by this Part, and by such articles the term of existence of the company may be limited and the company is subject to this Part. R.S.O. 1970, c. 233, s. 56.

Extension
of existence
of company

59.—(1) The term of existence of a company incorporated for a limited period may be extended for such a number of years as the Lieutenant Governor in Council, before the expiry of such period, may direct.

Extension of
charter after
expiry of
term of
company's
existence

(2) Where the term of existence of a company incorporated for a limited period has expired but the company has continued to carry on business and it appears to the Lieutenant Governor in Council that the company has acted in good faith, the Lieutenant Governor in Council, notwithstanding the expiry of such period, may, by amendment to its charter, extend the term of existence of the company as from the date of the expiry, and thereupon the company shall be deemed to have continued in existence

from such date and the works constructed by the company shall not be deemed to have become the property of Her Majesty, but to have remained vested in the company for the period named in such amendment to the charter.

(3) Where any extension or improvement of the works or any new works proposed to be undertaken are approved by the Minister, the charter may be amended authorizing the construction of the extension or improvement or the new works, as the case may be. R.S.O. 1970, c. 233, s. 57.

Amendment
of charter for
extensions
or improve-
ments

PART IV

TOLLS

60. In this Part,

Interpre-
tation

- (a) “operator” means the owner or occupier of the works;
- (b) “works” means works as defined in Part III that have been constructed. R.S.O. 1970, c. 233, s. 58.

61. The operator may demand and receive the lawful tolls upon all timber passing through or over his works, and shall have free access to such timber for the purpose of measuring or counting it. R.S.O. 1970, c. 233, s. 59.

Right
to tolls

62.—(1) In each year, before the 1st day of March, the operator shall publish once a week for four successive weeks in a newspaper published in the county or district in which the works are situate, a schedule of the tolls proposed to be charged, together with a notice stating that on a day and hour named he will apply to a judge of such county or district for the approval of such tolls.

Publication
of schedule
of tolls

(2) Before publishing the schedule of tolls, the operator shall apply to a judge of such county or district to fix the time for the hearing of the application so that it may be inserted in the notice, and the judge shall at the time so fixed hear the application and approve of the schedule of tolls after making such changes therein as he thinks proper.

Time for
hearing
application

(3) In fixing the tolls, the judge shall have regard to and take into consideration the original cost of the works and improvements, the amount required to maintain them and to cover interest upon the original cost, as well as such other matters as under all the circumstances are considered just and equitable.

Basis on
which tolls
to be fixed

Production
of books of
account

(4) The judge may on the hearing require the production of all books of account of the operator for the purpose of ascertaining the state of the affairs of the operator, and may, if he thinks it necessary, appoint some person to inspect such books and make a report to him on the affairs of the operator for the purpose of determining the tolls that should be charged.

No appeal

(5) The schedule of tolls as approved by the judge are final and binding and there is no appeal from his decision.

Publication
of tolls as
approved

(6) If the schedule of tolls is amended, then the tolls as so amended shall be published once a week for two successive weeks in a newspaper published in the county or district in which the works are situate. R.S.O. 1970, c. 233, s. 60 (1-6).

Copy of
tolls to be
sent to
Ministry

(7) The operator shall forthwith after the schedule of tolls has been approved by the judge send a copy of it certified by the judge to the Minister so that it may be filed in the Ministry, and, on failure to do so, he is guilty of an offence and on conviction is liable to a fine of not more than \$20. R.S.O. 1970, c. 233, s. 60 (7); 1972, c. 1, s. 1.

Demanding
of owner
statement
of quantity
of timber
liable to toll

63.—(1) The operator may demand from the owner of any timber intended to be passed over or through any part of the works, or from the person in charge of the timber, a written statement of the quantity of every kind of timber and of its destination, and of the parts of the works over or through which it is intended to pass, and if no written statement is given when required, or if a false statement is given, the whole of the timber, or such part of it as has been omitted by a false statement, is liable to double toll.

When false
estimate is
given as to
quantity
liable to toll,
extra tolls
may be
collected

(2) If any owner or person in charge of such timber knowingly or wilfully returns a larger quantity than it is his intention to pass over or through the works, the operator is entitled, in addition to any other remedy he may have, to collect tolls on the difference between the quantity so falsely estimated and the quantity actually passing over or through the works. R.S.O. 1970, c. 233, s. 61.

May sue
for tolls

64. If the tolls are not paid on demand, they may be recovered by action. R.S.O. 1970, c. 233, s. 62.

Tolls to be
apportioned
to the extent
of the works
used

65. If timber has come through or over part only of the works, the owner of the timber is liable to pay tolls only for such parts of the whole works as he has made use of if, in the schedule of tolls, the works are divided into

parts, and if not, to pay such a portion of the whole tolls as the distance the timber has come through or over the works bears to the whole distance for which the works extend. R.S.O. 1970, c. 233, s. 63.

66.—(1) The operator has a lien upon the timber passing through or over the works for the amount of the tolls, ranking next after the lien of the Crown for dues in respect of the timber. Lien of operator for tolls

(2) If the tolls are not paid, any justice of the peace having jurisdiction within or adjoining the locality in which the works are situate, upon the oath of the operator or of his agent being made that the just tolls have not been paid, shall issue a warrant for the seizure of the timber or so much of it as he considers sufficient to satisfy the tolls. Seizure of timber for tolls

(3) The warrant may be directed to any constable or to any person sworn as a special constable for that purpose at the discretion of the justice, and it shall authorize the person to whom it is directed, if the tolls are not paid within fourteen days from the date of the warrant, to sell the timber subject to any lien of the Crown for dues, and out of the proceeds to pay the tolls, together with the costs of the warrant and sale, rendering the surplus on demand to the owner. Warrant to seize and proceedings thereon

(4) A warrant shall not be issued after the expiration of one month from the time of the passage of the timber through or over any of the works. R.S.O. 1970, c. 233, s. 64. When warrant not to be issued

67.—(1) The operator may make rules for regulating the safe and orderly floating of timber over or through the works, but no such rules have any force or effect until approved by the Minister who may alter or amend them before giving his approval, and the Minister may revoke and cancel any rules so made and approved, and from time to time approve of new rules which the operator may make. Rules by operator

(2) Every person who resists or impedes the operator or any of his servants in the floating of timber through or over any such works, or in carrying out any such rules or resists him or his servants who may require access to any timber to ascertain the just tolls thereon, or in any way molests him or his servants in the exercise of any rights conferred upon them by this Part, is guilty of an offence and on conviction is liable to a fine of not less than \$1 and not more than \$10. Offence

Service of
summons

(3) In any prosecution under this section, the summons may be served either personally or by leaving a copy of it at the usual place of abode of the person named in it or with any adult person belonging to the raft to which the person named is attached.

Disposition
of fines

(4) The fines when collected shall be paid to the operator for his own use. R.S.O. 1970, c. 233, s. 65.

PART V

DRIVING OF TIMBER

Duty of
persons
floating
timber not
to obstruct
navigation

68. Any person putting or causing to be put timber into any water for the purpose of floating it in, upon or down the water shall make adequate provision and put on a sufficient force of men to break, and shall make all reasonable endeavours to break, jams of the timber and clear the timber from the banks and shores of the water with reasonable dispatch, and shall run and drive the timber so as not unnecessarily to delay or hinder the removal, floating, running or driving of other timber or unnecessarily to obstruct the floating or navigation of the water. R.S.O. 1970, c. 233, s. 66.

Right of
other persons
obstructed
to clear

69. If any person neglects to comply with section 68, it is lawful for any other person desiring to float, run or drive timber in, upon or down such water, and whose timber would be obstructed by such jams, to cause them to be broken and the timber to be cleared from the banks and shores of the water, and to be floated, run and driven in, upon or down the water. R.S.O. 1970, c. 233, s. 67.

Duty and
lien of persons
clearing
obstruction

70.—(1) The person who causes the jams to be broken or timber to be cleared, floated, run or driven, under section 69, shall do it with reasonable economy and dispatch, and shall take reasonable care not to leave timber on the banks or shores, and he has a lien upon the timber in the jams or upon the timber so cleared, floated, run or driven for the reasonable charges and expenses of breaking the jams and the clearing, floating, running, driving, booming and keeping possession of the timber, and may take and keep possession of it or so much thereof as is reasonably necessary to satisfy the amount of such charges and expenses pending the determination thereof by arbitration.

Idem

(2) The person taking possession of timber under this section shall use all reasonable care not to take it beyond the place of its original destination, if known, but may

securely boom and keep possession of it at or above such place.

(3) The owner or person controlling such timber, if ^{Notifying owner} known, shall be forthwith notified of its whereabouts, and, if satisfactory security is given for the amount of such charges and expenses, possession of the timber shall be given up. R.S.O. 1970, c. 233, s. 68.

71. When timber of any person upon or in any water or the banks or shores of the water are so intermixed with timber of another person that it cannot be conveniently separated for the purpose of being floated in, upon or down the water, the several persons owning or controlling the intermixed timber shall respectively make adequate provision and put on a fair proportion of the men required to break jams of the intermixed timber, and to clear it from the banks and shores of the water with reasonable dispatch, and to float, run and drive it in, upon or down the water, and the costs and expenses thereof shall be borne by the parties in such proportions as they agree upon, and, in default of agreement, as are determined by arbitration. R.S.O. 1970, c. 233, s. 69. ^{Provision when timber of several owners cannot conveniently be separated}

72. If any person neglects to comply with section 71, it is lawful for any other person whose timber is intermixed to put on a sufficient number of men to supply the deficiency and break jams of the intermixed timber and to clear it from the banks and shores of the water, and to float, run and drive all the intermixed timber in, upon or down the water. R.S.O. 1970, c. 233, s. 70. ^{Provision when owner of any portion of timber is in default}

73.—(1) The person supplying such deficiency and causing such jams to be broken, or such intermixed timber to be cleared, floated, run or driven, pursuant to section 72, shall do it with reasonable economy and dispatch, and shall take reasonable care not to leave timber on the banks or shores, and he has a lien upon the timber owned or controlled by the person guilty of such neglect for a fair proportion of the charges and expenses of breaking the jams, and the clearing, floating, running, driving, booming and keeping possession of such intermixed timber, and may take and keep possession of such timber or so much thereof as is reasonably necessary to satisfy the amount of such fair proportion of such charges and expenses pending the determination of the amount by arbitration. ^{Duty and lien of person supplying deficiency}

(2) The person taking possession of timber under this section shall use all reasonable care not to take it beyond the place of its original destination, if known, but may ^{Duty of holder}

securely boom and keep possession of it at or above such place.

Notifying
owner

(3) The owner or person controlling such timber, if known, shall be forthwith notified of its whereabouts, and, if satisfactory security is given for the amount of such proportion of charges and expenses, possession of the timber shall be given up. R.S.O. 1970, c. 233, s. 71.

Right of
owner to
separation
of timber

74. Where timber of any person upon or in any water or the banks or shores of the water is intermixed with timber of another person, any of the persons whose timber is intermixed may at any time during the drive require his timber to be separated from the other timber at some suitable and convenient place, and after such separation he shall secure his timber at his own cost and expense in such manner as to allow free passage for the other timber, but when any timber reaches its place of original destination, if known, so intermixed, it shall be there separated from the other timber, and after such separation each owner shall secure his timber at his own cost and expense. R.S.O. 1970, c. 233, s. 72.

Expenses of
separation to
be shared

75. The several persons owning or controlling the intermixed timber shall respectively make adequate provision and put on a fair proportion of the men required to make the separation, and the cost and expense of such separation shall be borne by the parties in such proportions as they agree upon, and, in default of agreement, as are determined by arbitration. R.S.O. 1970, c. 233, s. 73.

When owner
does not
provide for
his share of
work

76.—(1) If any person neglects to comply with section 75, it is lawful for any other person whose timber is intermixed to put on a sufficient number of men to supply the deficiency, and the timber owned or controlled by the person guilty of such neglect is subject to a lien in favour of the person supplying the deficiency for a fair proportion of the charges and expenses of making the separation, and for the reasonable charges and expenses of booming and keeping possession, and such person may take and keep possession of such timber or so much thereof as is reasonably necessary to satisfy the amount of such fair proportion of charges and expenses pending determination of the amount by arbitration.

Duty of
holder

(2) The person taking possession of timber under this section shall use all reasonable care not to take it beyond the place of its original destination, if known, but may securely boom and keep possession of it at or above such place.

(3) The owner or person controlling such timber, if known, shall be forthwith notified of its whereabouts, and, if satisfactory security is given for the amount of such proportion of charges and expenses, possession of the timber shall be given up. R.S.O. 1970, c. 233, s. 74.

Notifying
owner

77. The security referred to in sections 70, 73 and 76 may be by bond in Form 1 or by deposit of money, or in such other way as the parties agree upon. R.S.O. 1970, c. 233, s. 75.

Form of
security

78. If it is determined by arbitration that any person acting under the assumed authority of this Part has without just cause taken possession of or detained or caused to be taken possession of or detained timber of another person, or has after offer of security that the arbitrator thinks should have been accepted, detained such timber, or has through want of reasonable care left timber of another person on the banks or shores of a lake or river, or has taken timber of another person beyond the place of its original destination contrary to sections 70, 73 and 76, such first-mentioned person shall pay to such last-mentioned person such damages as the arbitrator determines. R.S.O. 1970, c. 233, s. 76.

Damages
when timber
wrongfully
detained

79. The lien given by sections 70, 73 and 76 is subject to the lien, if any, of any person for tolls for the use of any works or improvements made use of in running or driving timber. R.S.O. 1970, c. 233, s. 77.

Lien under
ss. 70, 73
and 76, subject
to lien for
tolls

80. Nothing in this Part affects the lien or rights of the Crown upon or in respect of any timber. R.S.O. 1970, c. 233, s. 78.

Rights of
Crown not
affected

81. All claims, disputes and differences arising from any act or omission under this Part or by reason of failure to perform any duty or obligation imposed by this Part shall be determined by arbitration and not by action. R.S.O. 1970, c. 233, s. 79.

Arbitration

82. The person claiming that another person has not complied with this Part, or claiming payment of any charges or expenses under this Part, or claiming a lien upon any timber, or claiming damages under section 78, shall give to such other person notice in writing stating the substance and amount of the claims made. R.S.O. 1970, c. 233, s. 80.

Notice of
claim

Counter-
claim

83. The person on whom a claim is made, at any time before the arbitration is entered upon or with leave of the arbitrator during the arbitration, may give the claimant notice in writing by way of counterclaim, stating the substance of any claim arising under this Part that such person may have against the claimant, and such counterclaim, unless barred under section 86, shall be determined in the arbitration. R.S.O. 1970, c. 233, s. 81.

Sale by
person
having lien

84.—(1) The person having a lien upon timber by virtue of this Part may with the approval of the arbitrator sell the timber or a sufficient part thereof in order to realize the amount of the lien, and of the costs, charges and expenses connected with the sale.

Direction by
arbitrator

(2) The arbitrator shall determine either by the award or by a separate document the time, place and manner of the sale, and may from time to time give directions in writing respecting the sale and the realization of the lien and of the costs, charges and expenses connected therewith. R.S.O. 1970, c. 233, s. 82.

Appeal

85. Any party to an arbitration under this Part may appeal from the award or directions in writing of the arbitrator to the Divisional Court in accordance with the rules of court. 1971, c. 50, s. 50 (23).

Limitation
of time for
making
claims

86.—(1) All claims arising under this Part shall be made within one year after they have arisen, otherwise they shall be barred, but in the event of such claims arising between the same parties in two successive seasons, they shall be so made within one year after the last of such claims has arisen.

Counter-
claim

(2) Where a claim is submitted to arbitration and a counterclaim is set up, the counterclaim shall be deemed to have been brought at the date of the service of the claim. R.S.O. 1970, c. 233, s. 84.

Exemption
of territory
from
operation
of Part

87. The Lieutenant Governor in Council may from time to time declare that any part of Ontario or any water therein is, until further declaration, exempt from the operation of this Part, and thereupon the same is exempt accordingly. R.S.O. 1970, c. 233, s. 85.

Bringing
exempted
territory
again under
Part

88. Any part of Ontario or any water exempted by declaration from the operation of this Part may, by declaration, be again brought within its operation until further declaration, and so on from time to time. R.S.O. 1970, c. 233, s. 86.

PART VI

WATER PRIVILEGES

89. This Part is subject to Part I. R.S.O. 1970, c. 233, Application s. 87.

90. In this Part, "occupied water privilege" means a mill privilege, or water power, that has been or is in use for mechanical, manufacturing, milling or hydraulic purposes, or for the use of which for any of such purposes the necessary works are *bona fide* in course of construction. R.S.O. 1970, c. 233, s. 88.

91. An occupied water privilege shall not be in any manner interfered with or encroached upon under the authority of this Part without the consent of the owner. R.S.O. 1970, c. 233, s. 89.

92. A person desiring to use or improve a water privilege, of which or a part of which he is the owner or legal occupant, for any mechanical, manufacturing, milling or hydraulic purposes by erecting a dam and creating a pond of water, increasing the head of water in any existing pond or extending its area, diverting the waters of any stream, pond or lake into any other channel, constructing any raceway or other erection or work that he requires in connection with the improvement and use of the privilege, or by altering, renewing, extending, improving, repairing or maintaining any such dam, raceway, erection or work, or any part thereof, may enter upon any land that he considers necessary to be examined and to make an examination and survey thereof, doing no unnecessary damage and making compensation for any actual damage done. R.S.O. 1970, c. 233, s. 90 (1).

93. A person to whom section 92 applies may expropriate land for the purposes mentioned in section 92. 1971, c. 50, s. 50 (24), *part*.

FORM 1

(Section 77)

Know all men by these presents that we (*here insert names of obligors, being the owner of the timber and at least one sufficient surety or, if the signature of the owner cannot be obtained without unreasonable delay, then being two*

sureties)
are held and firmly bound unto A.B. (*here insert the name of the person claiming the lien*) in the penal sum of (*double the amount of the claim*)

\$.....to be paid to the said A. B. his executors, administrators and assigns for which payment well and truly to be made we and each of us, bind ourselves, and each of us our and each of our executors and administrators jointly and severally, firmly by these presents, sealed with our seals,

and signed by us this....., 19....

Whereas the said A.B. claiming to act under Part V of the *Lakes and Rivers Improvement Act* has taken possession of certain (timber) owned or controlled by.....and claims a lien thereon
for the sum of \$....., under section 70, 73 or 76 (*as the case may be*) of the said Act.

And whereas this bond is given as security for payment to the said A. B., of such sum as he may be held entitled to by arbitration pursuant to the said Act, and of any costs and expenses of the arbitration that may become payable to him.

Now the condition of the above obligation is such that if the said
....., his executors or administrators to pay to the said A. B., his executors, administrators or assigns, such sum as is determined by arbitration pursuant to the said Act to be payable to the said A. B., his executors, administrators or assigns for charges and expenses, and also such sum as become payable to the said A. B., his executors, administrators or assigns, for costs and expenses of such arbitration, then the above obligation to be void, otherwise to remain in full force.

C.D. (SEAL)

F.G. (SEAL)

Signed, sealed and delivered }
in the presence of X.Y. }

CHAPTER 230

Land Titles Act

PART I

PRELIMINARY

1. In this Act,

Interpre-
tation

- (a) “court”, except where the context otherwise requires, means the High Court;
- (b) “land registrar” means a land registrar appointed under section 5 in whose office the land affected or intended to be affected by any proceeding, instrument or document is or may be registered;
- (c) “lot” includes a block, reserve and any other delineation of land on a plan;
- (d) “Minister” means the Minister of Consumer and Commercial Relations;
- (e) “owner” means an owner in fee simple;
- (f) “plan” means a plan that is drawn in accordance with the regulations;
- (g) “prescribed” means prescribed by this Act or by the regulations;
- (h) “registered” means registered under this Act;
- (i) “regulations” means the regulations made under this Act and section 97 of the *Registry Act*. R.S.O. 1970, c. 234, s. 1; 1972, c. 1, s. 43 (1); 1972, c. 132, s. 1; 1979, c. 93, ss. 1, 51, *revised*. R.S.O. 1980,
c. 445

2. The Minister is responsible for the administration of this Act. R.S.O. 1970, c. 234, s. 2; 1972, c. 1, s. 43 (2).

Administra-
tion of Act

PART II

ORGANIZATION AND ADMINISTRATION

APPLICATION OF ACT

Application
of Act

3.—(1) This Act applies to such parts of the Province as are designated by regulation.

Regulations

- (2) The Lieutenant Governor in Council may by regulation,
- (a) designate the parts of the Province to which this Act applies;
 - (b) describe the land titles divisions; and
 - (c) provide for the location of offices for the land titles system. 1979, c. 93, s. 2.

Changes in
land titles
divisions

4.—(1) The Lieutenant Governor in Council may, by regulation,

- (a) combine two land titles divisions into one land titles division;
- (b) divide a land titles division into two or more land titles divisions;
- (c) annex a part of a land titles division to an adjoining land titles division;
- (d) designate the names by which land titles divisions shall be known;
- (e) provide for the transfer of records and documents relating to land in a land titles division that is combined, divided or in part annexed by a regulation under clause (a), (b) or (c).

Idem

(2) No alteration in the boundaries of any riding, electoral district or municipality alters or affects the boundaries of any land titles division. 1972, c. 132, s. 3.

Appointment
of land
registrars

5.—(1) There shall be a land registrar for every land titles division who shall be appointed by the Lieutenant Governor in Council. 1972, c. 132, s. 4 (1), *part*.

Land registrars
and deputy
land registrars

(2) There shall be at least one deputy land registrar for every land titles division, and, where there is more than one deputy land registrar for a land titles division, one of the deputies shall be designated as the senior deputy land registrar.

(3) The deputy land registrars and such other employees as are considered necessary for the administration of this Act shall be appointed under the *Public Service Act*. 1979, c. 93, s. 3.

Appointments
under
R.S.O. 1980,
c. 418

(4) A deputy land registrar appointed under the *Public Service Act* shall act under the direction of the land registrar and when so acting may exercise the powers and perform the duties of a land registrar.

Powers and
duties of
deputy land
registrars

(5) A land registrar may appoint one or more assistant deputy land registrars who may exercise such of the powers and perform such of the duties of the land registrar in respect of his land titles division as are specified in writing by the land registrar. 1980, c. 49, s. 1.

Assistant
deputy
land
registrars

6.—(1) Every land titles office, including every combined registry office and land titles office, shall be known as a land registry office.

Land
registry
offices

(2) The system of registration under this Act shall be known as the land titles system. 1972, c. 132, s. 4 (1), *part*.

Land titles
system

7. Upon receiving an instrument for registration or deposit, the land registrar shall record it and the fee charged in a fee and receiving book in the form approved by the Director of Land Registration. 1979, c. 93, s. 5.

Recording
in fee and
receiving
book

OFFICERS, ETC.

8. The Director of Land Registration appointed under the *Registry Act* has general supervision and control over land registry offices for land titles divisions and the system for registration therein and, subject to this Act and the regulations, has similar powers and duties as he has under section 91 of the *Registry Act*, and such other duties as he is required to perform by the Lieutenant Governor in Council. R.S.O. 1970, c. 234, s. 10; 1972, c. 132, s. 5.

Duties of
Director
of Land
Registration
R.S.O. 1980,
c. 445

9.—(1) The Lieutenant Governor in Council may appoint a person who is a barrister and solicitor to be the Director of Titles.

Director
of Titles

(2) The Director of Titles may appoint one or more persons each of whom is a barrister and solicitor to be a Deputy Director of Titles.

Deputy
Directors of
Titles

(3) Where the Director of Titles has appointed more than one deputy under this section, he shall designate one of the deputies as the Senior Deputy Director of Titles.

Senior
Deputy
Director

(4) A Deputy Director of Titles appointed under this section has and may exercise such powers and perform such duties of the

Powers
and duties

Director of Titles under this or any other Act as are required by the Director of Titles.

Idem

(5) Where the office of Director of Titles becomes vacant,

(a) the Deputy Director of Titles; or

(b) if there is more than one Deputy Director of Titles, the Senior Deputy Director of Titles,

may exercise the powers and shall perform the duties of the Director of Titles until a Director of Titles is appointed. 1979, c. 93, s. 6 (1).

Duties of
Director
of Titles

10.—(1) The Director of Titles shall supervise and determine all matters relating to titles of land to which this Act applies.

Seal

(2) The Director of Titles shall have a seal of office in such form as the Lieutenant Governor in Council approves.

Hearing
before
Director

(3) Where under this Act the land registrar is authorized to hear and determine any matter, the matter may be determined by the Director of Titles at a hearing upon the request or consent of the land registrar.

Place for
hearing

(4) A hearing before the Director of Titles under subsection (3) may be held at the local land registry office or at the office of the Director of Titles, regard being had to the circumstances of the case.

Notices
of hearing

(5) Notices of a hearing to be held by the Director of Titles may be served or caused to be served by the Director of Titles or by the land registrar.

Authority of
Director,
Deputy
Director,
etc.

(6) Any action or duty authorized or prescribed by this Act to be performed by a land registrar may, in the absence of or with the consent of the land registrar, be performed by the Director of Titles, the Deputy Director of Titles or by an assistant Deputy Director of Titles, if so authorized by the Director of Titles.

Registration
of order of
Director

(7) Any order of the Director of Titles shall, upon his request, be registered, without fee, by the land registrar, who shall make such entries in or amendments to the register of the title of the land affected by the order as may be required by the Director in his order. R.S.O. 1970, c. 234, s. 12 (1-7); 1979, c. 93, s. 51.

First
registration

(8) The Director of Titles shall perform such of the functions of a land registrar relating to the first registration of land under this Act as are prescribed. 1979, c. 93, s. 7.

Disputes as
to fees

11.—(1) Where a dispute arises in regard to any question of fees under this Act, the land registrar shall forthwith submit the

dispute to the Director of Land Registration, and shall thereupon notify the person interested or his agent of such submission, and the decision of the Director of Land Registration upon the question submitted is final, unless appealed from and varied upon appeal as hereinafter mentioned.

(2) Where, in the opinion of the Director of Land Registration, a fee payable under this Act is unduly excessive, having regard to all the circumstances, the Director of Land Registration may reduce the fee to such amount as he considers appropriate. Reduction of fees

(3) All decisions given by the Director of Land Registration shall be in writing and the appeal therefrom shall be to the Divisional Court in accordance with the rules of court. 1972, c. 132, s. 8 (1), *part*; 1979, c. 93, s. 51, *revised*. Decisions of Director of Land Registration

12.—(1) Where the office of land registrar becomes vacant, Temporary land registrar

(a) the deputy land registrar; or

(b) if there is more than one deputy land registrar, the senior deputy land registrar; or

(c) if there is no deputy land registrar, a person employed in a land titles office and designated by the Director of Land Registration,

may exercise the powers and shall perform the duties of the land registrar until a land registrar is appointed.

(2) The Director of Land Registration may appoint a person to act as a deputy land registrar in a land registry office for a land titles division, who shall be deemed to be the deputy land registrar therein during such period as the Director of Land Registration may designate. 1972, c. 132, s. 8 (1), *part*; 1979, c. 93, s. 51. Deputy land registrar at large

13.—(1) There shall be an examiner of surveys who shall be appointed by the Lieutenant Governor in Council. Examiner of surveys

(2) A person shall not be appointed as examiner of surveys unless he is an Ontario land surveyor of not less than five years standing. Qualifications

(3) The examiner of surveys shall work under the direction of the Director of Land Registration and shall perform such duties under this Act, the *Boundaries Act*, the *Certification of Titles Act*, the *Condominium Act* and the *Registry Act* as are required by the Director of Land Registration or prescribed by the Lieutenant Governor in Council. 1972, c. 132, s. 8 (1), *part*. Duties

R.S.O. 1980,
c. 47, 61,
84, 445

Assistant
examiners
of surveys

(4) The examiner of surveys may appoint one or more persons to be assistant examiners of surveys. 1972, c. 132, s. 8 (1), *part*; 1979, c. 93, s. 9.

Duties

(5) An assistant examiner of surveys shall perform such duties of the examiner of surveys under this or any other Act as are required by the examiner of surveys. 1972, c. 132, s. 8 (1), *part*.

Deputy
Directors of
Titles for
R.S.O. 1980,
c. 47

14. The Director of Titles may appoint one or more persons each of whom is an Ontario land surveyor to be a Deputy Director of Titles for purposes of exercising the powers and performing the duties of the Director of Titles under the *Boundaries Act*. 1979, c. 93, s. 10.

Oath of
office

15. Every land registrar, before he enters upon the duties of his office, shall take and subscribe an oath in the prescribed form which shall be transmitted by him to the Director of Land Registration. 1979, c. 93, s. 11, *part*.

Protection of
officers,
etc.

16.—(1) No officer appointed under this Act and no person acting under his authority or under an order of a court or a rule is liable to any action, suit or proceeding for or in respect of an act or matter in good faith done or omitted to be done in the exercise or supposed exercise of the powers conferred by this Act or of any such order or rule. R.S.O. 1970, c. 234, s. 19.

Liability
of Crown
R.S.O. 1980,
c. 393

(2) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person referred to in subsection (1) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in like manner as if subsection (1) had not been enacted. 1979, c. 93, s. 12.

Seal of
office

17. There shall be a seal for every land registry office for a land titles division. R.S.O. 1970, c. 234, s. 20.

Holiday
defined

18.—(1) In this section, “holiday” means,

(a) Saturday;

(b) Sunday;

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c. 418

(c) a day that is a holiday for civil servants as prescribed by the regulations under the *Public Service Act*. 1972, c. 132, s. 9.

Office
hours

(2) Except on holidays when they shall be closed, every land registry office shall be kept open during such hours as are pre-

scribed and no instrument shall be received for registration except within such hours as are prescribed. 1979, c. 93, s. 13.

AUTHORITY OF OFFICERS

19.—(1) The Director of Titles or land registrar in an application made to him may act upon depositions or examinations taken before any of the special examiners appointed by the court, who may administer the requisite oath to any person whose deposition or cross-examination the Director of Titles or land registrar has requested such examiner to take, and any such deposition or examination may be taken in shorthand, and any *viva voce* evidence given before the Director of Titles or land registrar may be taken down by a sworn shorthand writer if the examining party so desires.

Depositions
taken before
special
examiners

(2) The Director of Titles or land registrar may name the witnesses to be examined or he may request the examiner to take the examination of all witnesses produced by any named person or of any class of witnesses. R.S.O. 1970, c. 234, s. 22; 1979, c. 93, s. 51.

Directions
to examiner

20.—(1) The Director of Titles or land registrar, by summons under the seal of his office, may require the attendance of all such persons as he thinks fit in an application made to him and may in the summons require any person to produce for inspection any document, deed, instrument or evidence of title to the production of which the applicant or a trustee for him is entitled.

Power to
summon
witnesses

(2) He may also, by a like summons, require any person having the custody of any map, plan or book made or kept in pursuance of any statute to produce such map, plan or book for his inspection.

To require
production
of plans,
books, etc.

(3) He may examine upon oath any person appearing before him, and he may allow to every person summoned by him reasonable charges for his attendance.

Examination
on oath

(4) Any charges allowed by the Director of Titles or the land registrar under this section shall be deemed to be charges incurred in or about proceedings for registration of land and may be dealt with accordingly.

Charges,
etc.

(5) If any person disobeys an order of the Director of Titles or land registrar made under this section, the Director of Titles or land registrar may certify such disobedience to the court, and thereupon such person may be punished by the court in the same manner as if the order were the order of the court.

Dis-
obedience
of orders

Non-attendance or refusal to answer questions

(6) If any person, after the delivery to him of the summons or of a copy thereof, wilfully neglects or refuses to attend in pursuance of the summons or to produce any map, deed, instrument, evidence of title, plan, book or other document or to answer upon oath or otherwise such questions as may be lawfully put to him by the Director of Titles or land registrar, he is guilty of an offence and on conviction is liable to a fine of not more than \$50.

Tender of conduct money and fees

(7) No person shall be required to attend in obedience to a summons or to produce documents unless the fees and allowances for his attendance in accordance with the tariff of the court are paid or tendered to him. R.S.O. 1970, c. 234, s. 23; 1979, c. 93, s. 51.

Director of Titles or land registrar may state a case for opinion of Divisional Court, or direct issue

21.—(1) Where upon the examination of a title or upon an application with respect to registered land the Director of Titles or the land registrar entertains a doubt as to any matter of law, he may state a case for the opinion of the Divisional Court and may name the parties to it, and where he entertains a doubt as to any matter of fact, he may direct an issue to be tried for the purpose of determining such fact.

Exercise of powers

(2) The powers conferred by this section shall not be exercised by a land registrar except with the approval of the Director of Titles. R.S.O. 1970, c. 234, s. 24; 1979, c. 93, s. 51.

Administration of oaths

R.S.O. 1980, c. 445

22. The land registrar, or any officer in his office authorized by him in writing, or any person authorized for a like purpose under the *Registry Act*, may administer an oath for any of the purposes of this Act. R.S.O. 1970, c. 234, s. 25; 1979, c. 93, s. 51.

Inhibiting of registered dealings

23.—(1) The court, the Director of Titles or the land registrar, upon the application of any person interested made in the prescribed manner in relation to any registered land or charge, after directing such inquiries, if any, to be made and notices given and after hearing such persons as the court, the Director of Titles or the land registrar considers necessary or expedient, may issue an order or make an entry inhibiting for a time or until the occurrence of an event to be named in such order or entry or generally until further order or entry any dealing with registered land or with a registered charge.

Terms, etc.

(2) The court, the Director of Titles or the land registrar of his own accord and without notice, may make an order or an entry under subsection (1) and may impose any terms or conditions that are considered just, and may discharge the order or cancel the entry, with or without costs, and generally act in such manner as the justice of the case requires. R.S.O. 1970, c. 234, s. 26; 1979, c. 93, s. 51.

PART III

JURISDICTION OF THE COURT

24.—(1) Any jurisdiction of the court under this Act, other than an appeal to which section 17 of the *Judicature Act* applies, may be exercised by a judge of the court. Exercise of jurisdiction to be R.S.O. 1980, c. 223

(2) The court, on any application or in any other matter or proceeding coming before it under this Act, has the like authority in respect of costs as it has in any ordinary proceeding within its jurisdiction. Costs R.S.O. 1970, c. 234, s. 27, *revised*.

25.—(1) Officers appointed under this Act shall obey the order of any competent court in relation to registered land on being served with the order or a certified copy thereof. Court order to be obeyed

(2) Where under an order of the court freehold or leasehold land or a charge is vested in any person, the land registrar shall, on due proof of the order, make such entries in the register as are necessary to give effect thereto, but, if any person whose estate is affected by the order is not shown by the order to be a party to the cause or matter in which the order was made, the applicant shall furnish such evidence as is requisite to show that he is bound thereby. Registration under vesting order R.S.O. 1970, c. 234, s. 28; 1979, c. 93, s. 51.

26.—(1) Where a hearing has been held under this Act, the decision or order of the Director of Land Registration, Director of Titles or of the land registrar may be appealed to a judge of the county or district court of the county or judicial district in which the land to which the decision or order relates is situate or of such other county or judicial district as the parties agree to, and the appeal shall be by trial *de novo*. Right to appeal

(2) An appeal lies from a decision of a judge of a county or district court under subsection (1) to the Divisional Court. Appeal to Divisional Court 1979, c. 93, s. 14.

27. Any person affected by an order made under this Act by a judge of the court may appeal to the Divisional Court within the prescribed time and, subject to the rules, in like manner as in the case of other appeals to that court. Appeal R.S.O. 1970, c. 234, s. 30.

28.—(1) Where a minor, mentally defective person, mentally incompetent person, person of unsound mind, person absent from Canada or person yet unborn is interested in land in respect of the title to which a question arises, any person interested in the land may apply to the Divisional Court for a direction that the opinion of the court in the case stated to it under this Act shall be conclusively binding on the minor, mentally defective person, mentally Where persons absent, unborn or under disability interested

incompetent person, person of unsound mind, person absent from Canada or unborn person.

Powers of
court on
stated case

(2) The Divisional Court shall hear the allegations of all parties appearing before it and may disapprove altogether or may approve, either with or without modification, of the directions of the Director of Titles or of the land registrar in respect of any case stated as to the title of land.

Power to
appoint
guardian,
etc.

(3) The Divisional Court may also, if necessary, appoint a guardian or other person to appear on behalf of a minor, mentally defective person, mentally incompetent person, person of unsound mind, person absent from Canada or unborn person.

Order where
persons
absent,
unborn or
under
disability

(4) The Divisional Court, if satisfied that the interests of the person under disability, absent or unborn will be sufficiently represented in any case, shall make an order declaring that all persons, with the exceptions, if any, named in the order, are to be conclusively bound, and thereupon all persons, with such exceptions, are conclusively bound by the decision of the court. R.S.O. 1970, c. 234, s. 31; 1979, c. 93, s. 51.

Power of
court in
action for
specific
performance

29.—(1) Where an action is instituted for the specific performance of a contract relating to registered land or a registered charge, the court having cognizance of the action may by such mode as it considers expedient cause all or any persons who have registered estates or rights in the land or charge, or have entered notices, cautions or inhibitions against the same, to appear in the action and show cause why the contract should not be specifically performed, and the court may direct that an order made by the court in the action is binding on such persons or any of them.

Costs in
action for
specific
performance

(2) All costs awarded to a person so appearing may, if the court so orders, be taxed as between solicitor and client. R.S.O. 1970, c. 234, s. 32.

PART IV

APPLICATION FOR FIRST REGISTRATION

APPLICANTS

Application
for
registration

30.—(1) A person entitled for his own benefit at law or in equity to an estate in fee simple in land, whether or not subject to encumbrances, or a person capable of disposing for his own benefit by way of sale of an estate in fee simple in land, whether or not subject to encumbrances, may apply to the land registrar to be registered under this Act or to have registered in his stead any nominee as owner of the land with an absolute, qualified or possessory title, as the case may be.

(2) A person who has contracted to buy for his own benefit an estate in fee simple in land, whether or not subject to encumbrances, may also apply if the vendor consents to the application.

Application
by
purchaser

(3) A person holding land on trust for sale and a trustee, mortgagee or other person having a power of selling land may authorize the purchaser to make an application to be registered as owner with any title with which an owner is authorized to be registered, and may consent to the performance of the contract being conditional on his being so registered, or such a person, except a mortgagee, may himself apply to be registered as owner with the consent of the persons, if any, whose consent is required to the exercise by the applicant of his trust or power of sale.

Application
by or
authorized
by trustee,
etc.

(4) A mortgagee having a power of selling land may apply to have the mortgagor or other person owning the equity of redemption registered as owner with any such title.

Application
by a
mortgagee
with a power
of sale

(5) Subject to subsection 44 (4) and to section 45, the land registrar may, upon an application made by or on behalf of any minister of the government of Canada or Ontario, register under this Act any land claimed to be owned by Her Majesty the Queen in right of Canada or Ontario, as the case may be, notwithstanding that the land had not previously been granted by the Crown. R.S.O. 1970, c. 234, s. 33; 1979, c. 93, s. 51.

Registration
of Crown
as owner

31.—(1) The council of any municipality to which this Act applies may by by-law authorize an application to be made to the land registrar to have any land that is within the municipality registered under this Act.

Application
by municip-
al council

(2) For the purpose of an application under subsection (1), the municipality shall be deemed to be the agent of the owners and other persons having an interest in the land designated in the by-law and it is not necessary to obtain the consent of such owners and other persons to the application.

No consent
required

(3) The costs of and incidental to an application under subsection (1) shall be borne and paid by the municipality making the application and the municipality may recover the same by levy of a special rate of assessment on all parcels included in the application or in the municipality. R.S.O. 1970, c. 234, s. 34 (1-3); 1979, c. 93, s. 51.

Costs

(4) The land registrar shall not proceed with an application under this section without the consent of the Director of Titles.

Consent of
Director

(5) The Lieutenant Governor in Council may determine the amount of fees to be paid to the land registrar and to the Director of Titles on an application under this section.

Registration
fees

Fee for
certificate
as to
excursions
R.S.O. 1980,
cc. 470, 223.

(6) Notwithstanding section 11 of the *Sheriffs Act* or the rules under the *Judicature Act*, the Director of Land Registration may determine the fee payable to a sheriff for a certificate as to executions in connection with an application under this section. R.S.O. 1970, c. 234, s. 34 (6-8); 1979, c. 93, s. 51.

Application
by Minister
where land
not in a
municipality

(7) The Minister may apply under this section as agent of the owners and other persons having interests in any land designated by him that is not within a municipality, and subsections (2), (3), (5) and (6) apply with necessary modifications. R.S.O. 1970, c. 234, s. 34 (9); 1972, c. 1, s. 43 (2).

Land registrar's
power to
register land
to which
R.S.O. 1980,
c. 445 applies

32.—(1) A land registrar, with the concurrence of the Director of Titles, may, subject to the regulations, register under this Act any land in his land titles division to which the *Registry Act* applies, including land owned by Her Majesty the Queen in right of Canada or Ontario in respect of which evidence of such ownership has been registered under the *Registry Act*.

Discretion
of land
registrar re
quality of title

(2) A parcel of land may be registered under this section with an absolute, possessory, qualified or leasehold title, according to the circumstances, as appears most appropriate to the land registrar.

Title may be
qualified as to
location and
extent

(3) A parcel of land may be registered under this section with a title qualified as to the location of the boundaries and the extent of the parcel.

Regulations
re notices,
etc.

(4) The Lieutenant Governor in Council may make regulations governing the registration of land under subsection (1), and matters relating thereto, including the notices to be given to owners and encumbrancers. 1972, c. 132, s. 10; 1979, c. 93, s. 51.

Registration
of Crown
grant
R.S.O. 1980,
c. 413

33.—(1) A land registrar shall register a Crown grant received by him under section 36 of the *Public Lands Act* that meets the requirements for registration set out in this Act and the regulations. 1979, c. 93, s. 16.

Where
notice of
caution or
adverse
claim un-
necessary

(2) It is not necessary to issue a notice in respect of a caution or adverse claim that has been lodged if, by the certificate of the Minister or Deputy Minister of Natural Resources, it appears that the claim in respect of which the caution or adverse claim was lodged was considered by the Minister and disposed of before the issue of the patent, and, if before the receipt of such a certificate any proceedings have been taken by a land registrar in respect of the caution or adverse claim, he shall thereupon discontinue the proceedings and disallow any objection or claim founded thereon and make such order as to costs as he considers just. R.S.O. 1970, c. 234, s. 35 (2); 1972, c. 4, s. 12; 1979, c. 93, s. 51.

Action by
land registrar

(3) Where there is no contest as to the rights of the parties, the land registrar may make the requisite entry and issue his certifi-

cate, but, in case of a contest, he shall transmit the papers to the Director of Titles before registering the patentee as owner, and shall otherwise proceed as provided in section 45.

(4) Where the cautioner consents to the registration of the patentee, the land registrar need not issue a notice on account of the caution.

Where cautioner consents

(5) Notwithstanding subsection 39 (1), letters patent from the Crown demising land or mining rights for a term of years, or for any greater estate, granted on or after the 31st day of December, 1887, shall be deemed to have been and to be within this section. R.S.O. 1970, c. 234, s. 35 (3-5); 1979, c. 93, s. 51.

Registration of Crown lease-patents, etc.

34. Where land patented by the Government of Canada has not been registered under this Act or the *Registry Act* and the patentee applies for registration within five years after the date of the patent, the land registrar has authority to register the patentee as owner of the land without submitting his finding upon the application to the Director of Titles for his concurrence. 1979, c. 93, s. 17.

Registration of federal patentees
R.S.O. 1980, c. 445

35.—(1) Upon an entry of ownership being made, the land registrar, unless the land is free grant or otherwise exempt from execution, shall, in the prescribed form, notify the sheriff in whose bailiwick the land lies of the entry of the patentee as owner. R.S.O. 1970, c. 234, s. 37 (1); 1979, c. 93, s. 51.

Notice by land registrar to sheriff

(2) No entry of any dealing with the land shall be made in the register until fourteen days after the notice is given, unless proof is previously made that the land is not liable to any execution. 1972, c. 132, s. 12.

After what time entries may be made in register

(3) Upon receipt of the notice, the sheriff shall forthwith transmit to the land registrar a copy of any execution in his hands affecting the land of the patentee, and, if within the fourteen days no copy of an execution against the land of the patentee is received from the sheriff, the land registrar may assume that the land is not subject to any execution and may enter subsequent dealings with the land accordingly, and as against such entry no claim shall afterwards be sustained in respect of an execution against the patentee.

Action of sheriff and land registrar after notice

(4) Where the land registrar receives from the sheriff a copy of an execution affecting the land, an entry thereof shall be made against the land by the land registrar and all dealings with it are subject to the execution. R.S.O. 1970, c. 234, s. 37 (3, 4); 1979, c. 93, s. 51.

Entry where copy of execution received

TITLES

Evidence
where absolute
title required

36. Where an absolute title is required, the applicant or his nominee shall not be registered as owner of the fee simple until the title is approved by the Director of Titles. R.S.O. 1970, c. 234, s. 39.

Possessory
title may be
registered

37.—(1) Where on an application for first registration it appears that the applicant is so entitled by virtue of length of possession of the land, he may be registered as the owner of the land with a possessory title.

Absolute
title based on
possession

(2) Subject to the approval of the Director of Titles, an applicant for first registration whose claim to ownership is based upon length of possession of the land may be registered as the owner in fee simple with an absolute title of the land. R.S.O. 1970, c. 234, s. 40.

A qualified
title may be
registered

38.—(1) Where on the examination of the title it appears to the land registrar that it can be established only for a limited period or subject to certain reservations, the land registrar, on the application of the party applying to be registered, may, by an entry made in the register, except from the effect of registration any estate, right or interest arising before a specified date, or arising under a specified instrument, or otherwise particularly described in the register.

Qualified
title

(2) A title registered subject to such excepted estate, right or interest shall be called a qualified title. R.S.O. 1970, c. 234, s. 41; 1979, c. 93, s. 51.

Register of
leasehold
land

39.—(1) A separate register of leasehold land shall be kept and,

- (a) any person who has contracted to buy for his own benefit leasehold land held under a lease for a life or lives, or determinable on a life or lives, or for a term of years of which at least twenty-one are unexpired, or in respect of which the lessee or his assigns is or are entitled to a renewal term or succession of terms amounting with the part unexpired of the current term to at least twenty-one years, or to a renewal for a life or lives, whether or not subject to encumbrances;
- (b) any person entitled for his own benefit, at law or in equity, to leasehold land held under any such lease whether or not subject to encumbrances; or
- (c) any person capable of disposing for his own benefit by way of sale or leasehold land held under any such lease whether or not subject to encumbrances,

may apply to the land registrar to be registered or to have registered in his stead any nominee as owner of such leasehold land, with the addition, where the lease under which the land is held is derived immediately out of freehold land and the applicant is able to submit for examination the title of the lessor, of a declaration of the title of the lessor to grant the lease under which the land is held, if, in the case of leasehold land contracted to be bought, the vendor consents to the application.

(2) Every applicant for registration of leasehold land shall deposit with the land registrar the lease in respect of which the application is made or, if the lease is proved to the satisfaction of the land registrar to be lost, a copy of the lease or of a counterpart thereof, verified to the satisfaction of the land registrar, and such lease or verified copy is in this Act referred to as the registered lease.

(3) Leasehold land held under a lease containing an absolute prohibition against alienation shall not be registered.

(4) Leasehold land held under a lease containing a prohibition against alienation, without the licence of some other person, shall not be registered until provision is made in the prescribed manner for preventing alienation, without such licence by entry in the register of a restriction to that effect.

(5) Section 30 applies to leasehold as well as to freehold land.

(6) A person may apply for registration of a leasehold interest under this section where the freehold title out of which his interest is derived is registered under this Act.

(7) An applicant or his nominee shall not be registered as owner of leasehold land until the title to the land is approved by the land registrar and, if he applies to be registered as owner of leasehold land with a declaration of the title of the lessor to grant the lease under which the land is held, shall not be registered with the declaration until the lessor, after an examination of his title by the land registrar, is declared to have had an absolute or qualified title to grant the lease under which the land is held. R.S.O. 1970, c. 234, s. 42; 1979, c. 93, s. 51.

EASEMENTS AND MINING RIGHTS

40.—(1) The land registrar may register the owner of,

(a) any incorporeal hereditament of freehold tenure enjoyed in gross; or

Registration
of easements,
mining rights

- (b) any mines or minerals where the ownership of the same has been severed from the ownership of the land,

in the same manner and with the same incidents in and with which he is by this Act empowered to register the owner of land, or as near thereto as circumstances admit.

Registration of easements when dominant land registered

(2) Where an easement in or over unregistered land is granted as appurtenant to registered land, the land registrar, after such examination as he considers necessary, may enter the easement in the register of the dominant land with a declaration that the title thereto is absolute, qualified or possessory, or otherwise as the case requires, and shall cause to be registered in the proper registry division a certificate of such entry.

Certificate of easement when dominant land unregistered

(3) Where an easement in or over registered land is granted as appurtenant to unregistered land, the land registrar may issue a certificate setting out the easement and the land to which it is appurtenant, which may be registered in the registry division in which the land is situate, and he shall note on the register that such certificate has been issued.

Notice of easement

(4) Where the existence of an easement is proved, the land registrar may, if he thinks fit, enter notice thereof on the register.

Statement of appurtenant easement on certificate, etc.

(5) Where title is shown to an easement appurtenant to land being registered, the facts may be stated in the entry and certificate of ownership. R.S.O. 1970, c. 234, s. 43; 1979, c. 93, s. 51.

Easement created by condominium declaration

41.—(1) Where the first registered description of an easement is that contained in a condominium declaration and description, and the easement is expressly intended,

- (a) to be an easement through the common elements and to benefit other land owned by the declarant; or

- (b) to be an easement through other land owned by the declarant and to benefit the condominium property,

the easement is created for all purposes to the same extent as if it had been created by a transfer and the declarant had not been the same person as the owner of the other land.

Easement to benefit condominium property

(2) Where, in a transfer that is registered before the registration of a transfer of any unit made by the declarant, an easement through land outside the condominium property is transferred by the declarant to the condominium corporation to be part of the common elements, the easement does not merge by operation of law.

(3) Where, in a transfer that is registered before the registration of a transfer of any unit made by the declarant, the common elements are made subject to an easement expressly intended to benefit other land owned by the declarant, the easement is created for all purposes as if the declarant had not been the same person as the owner of the other land.

Easement affecting common elements

(4) Where, in an instrument, an intention is expressed by a condominium corporation that an easement transferred to the corporation is to be part of the common elements, and any instrument in relation thereto required by the *Condominium Act* has been registered, the easement, upon registration of the instrument in which the intention is expressed, becomes part of the common elements.

Easement becomes part of common elements
R.S.O. 1980, c. 84

(5) Section 29 of the *Planning Act* does not apply to an easement to which subsection (1) of this section applies if the condominium description was approved or exempted under subsection 50 (2) of the *Condominium Act*, or a predecessor thereof.

Where R.S.O. 1980, c. 379, s. 29, does not apply

(6) Except to the extent that rights governed by this section have been determined by a court, this section has retroactive application.

Retroactive effect

(7) In this section,

Interpretation

(a) “common elements” means common elements;

(b) “declarant” means declarant;

(c) “declaration” means declaration;

(d) “description” means description;

(e) “property” means property; and

(f) “unit” means unit,

as defined in the *Condominium Act*. 1980, c. 49, s. 2.

PROCEDURE ON FIRST REGISTRATION

42. The examination of a title shall be conducted in the prescribed manner, subject to the following:

Regulations as to examination of title

1. Where notice has been given, sufficient opportunity shall be afforded to any person desirous of objecting to come in and state his objections to the land registrar.
2. The land registrar has jurisdiction to hear and determine any such objections, subject to an appeal to the Divi-

sional Court in the prescribed manner and on the prescribed conditions.

3. If the land registrar, upon the examination of any title, is of opinion that it is open to objection but is nevertheless a title under which the holding will not be disturbed, he may approve of it or may require the applicant to apply to the court, upon a statement signed by the land registrar, for its sanction to the registration.

R.S.O. 1980,
c. 520

4. It is not necessary to produce any evidence that by the *Vendors and Purchasers Act* is dispensed with as between vendor and purchaser or to produce or account for the originals of registered instruments unless the land registrar otherwise directs.

5. The land registrar may receive and act upon any evidence that is received in court on a question of title, or any evidence that the practice of conveyancers authorizes to be received on an investigation of a title out of court, or any other evidence, whether it is or is not receivable or sufficient in point of strict law, or according to the practice of conveyancers, if it satisfies him of the truth of the facts intended to be made out thereby.

6. The land registrar may refer to and act upon not only the evidence adduced before him in the proceeding in which it is adduced but also any evidence adduced before him in any other proceeding wherein the facts to which it relates were or are in question.

7. The land registrar may also act upon his own personal knowledge of material facts affecting the title upon making and filing a report, stating his knowledge of the particular facts and the means he had of obtaining such knowledge. R.S.O. 1970, c. 234, s. 44; 1979, c. 93, s. 51.

Notice

43. A notice of an application for first registration is sufficiently served upon an owner, mortgagee or chargee, or his assignee, of land adjoining the land of or claimed by the applicant for first registration if it is sent by registered mail addressed to the owner, mortgagee or chargee, or his assignee, as the case may be, of the land adjoining the land of the applicant at the address furnished under section 166 of this Act or section 37 of the *Registry Act*, or, where no such address has been furnished, addressed to the solicitor whose name appears on the conveyance, mortgage or charge or assignment thereof under which the owner, mortgagee or chargee, or his assignee, appears to have an interest in such adjoining land. R.S.O. 1970, c. 234, s. 45.

R.S.O. 1980,
c. 445

44.—(1) A person having or claiming such an interest in unregistered land as entitles him to object to any disposition thereof being made without his consent may apply to the land registrar for the registration of a caution to the effect that the cautioner is entitled to notice in the prescribed form, and to be served in the prescribed manner, of any application that may be made for the registration of the land.

Caution
against
registration
of land

(2) Every caution under this section shall be renewed before the expiration of five years from the date of registration of the caution, otherwise it ceases to have effect.

Renewal

(3) A caution registered under this section in respect of unpatented land has no validity unless the description contained therein specifies the land in accordance with the description subsequently contained in the patent or describes it in such manner that the land registrar may know that the description in the caution is intended to affect the land described in the patent.

Unpatented
land

(4) After a caution has been registered in respect of unregistered land and while the caution is in force, registration shall not be made of the land until notice has been served on the cautioner to appear and oppose the registration and until the prescribed time has elapsed after the date of the service of the notice, or the cautioner has appeared, whichever first happens. R.S.O. 1970, c. 234, s. 48; 1979, c. 93, s. 51.

Cautioner
entitled to
notice of
proposed
registration
of land

45.—(1) If, upon an application for first registration, the land registrar finds that the applicant or his nominee is entitled to be registered, he shall sign a memorandum to that effect at the foot of the application and draft entry and shall transmit them to the Director of Titles, with the deeds, evidence and other papers before him and a draft of the entry of ownership proposed to be made.

Land registrar
to transmit
application to
Director of
Titles

(2) If the Director of Titles concurs in the memorandum and the draft entry, he shall endorse his approval thereon and return the papers transmitted to him, and the land registrar may thereupon register the applicant or his nominee as owner.

Where Director
of Titles
concurs

(3) If the Director of Titles does not concur in the memorandum and draft entry, he shall communicate his opinion to the land registrar and cause such action to be taken as he considers expedient and, if his objections are not removed by explanations or additional evidence, the applicant or his nominee shall not be registered unless the court on appeal, or on a case stated for its opinion, otherwise directs.

Where Director
of Titles does
not concur

(4) If there is a contest upon the decision of the Director of Titles, registration shall be delayed for ten days to enable anyone who so desires to appeal. R.S.O. 1970, c. 234, s. 49; 1979, c. 93, s. 51.

Stay of
proceedings

Exception to
application
of s. 45

46. Except as provided in subsection 33 (3), section 45 does not apply to applications coming within sections 33 and 34, or to applications for possessory titles, or for the registration of leasehold land where the freehold or other estate out of which the lease is derived is registered land, or where a declaration of the title of the lessor to grant the lease is not required. R.S.O. 1970, c. 234, s. 50.

EFFECT OF FIRST REGISTRATION

Liability of
registered
land to
easements
and certain
other rights

47.—(1) All registered land, unless the contrary is expressed on the register, is subject to such of the following liabilities, rights and interests as for the time being may be subsisting in reference thereto, and such liabilities, rights and interests shall not be deemed to be encumbrances within the meaning of this Act:

1. Provincial taxes and succession duties and municipal taxes, charges, rates or assessments, and school or water rates.
2. Any right of way, watercourse, and right of water, and other easements.
3. Any title or lien that, by possession or improvements, the owner or person interested in any adjoining land has acquired to or in respect of the land.
4. Any lease or agreement for a lease, for a period yet to run that does not exceed three years, where there is actual occupation under it.
5. Any right under Part III of the *Family Law Reform Act*, of the spouse of the person registered as owner.
6. Any right of the wife or husband of the person registered as owner to dower or curtesy, as the case may be, in case of surviving the owner.
7. A mechanic's lien where the time limited for its registration has not expired.
8. Any right of expropriation, access or user, or any other right, conferred upon or reserved to or vested in the Crown by or under the authority of any statute of Canada or Ontario.
9. Any public highway.
10. Any liabilities, rights and interests created under section 38 of the *Public Transportation and Highway Improvement Act*.

R.S.O. 1980,
c. 152

R.S.O. 1980,
c. 421

11. Any by-law heretofore passed under section 39 of the *Planning Act* or a predecessor of that section, and any other municipal by-law heretofore or hereafter passed, affecting land that does not directly affect the title to land. R.S.O. 1980,
c. 379

12. The provisions of section 29 of the *Planning Act*.

13. Where the registered owner is or a previous registered owner was a railway company, any interest that may be or may have been created by any instrument deposited in the office of the Secretary of State of Canada or the Registrar General of Canada, as the case may be, under section 139 of the *Railway Act* (Canada), or any predecessor thereof, but, where the previous registered owner was a railway company, this paragraph does not apply to a subsequent registered owner, except a railway company, unless a note of the previous ownership of the land by the railway company has been entered in the title register. R.S.C. 1970,
c. R-2
R.S.O. 1970, c. 234, s. 51 (1); 1971, c. 61, s. 1; 1972, c. 132, s. 13 (1); 1978, c. 7, s. 1, *revised*.

(2) Where a licence under the *Crown Timber Act* has been or is granted and the land is registered under this Act, the land shall be deemed to have been and to be subject to the rights of the licensee or his assigns for the current licence year under the licence, and to the rights of Her Majesty in the pine trees under the *Public Lands Act*, without the fact of the land being so subject being expressed in the entry in the register. Effect of
registration
of land upon
timber
licences
R.S.O. 1980,
cc. 109, 413

(3) A parcel of land registered under this Act is not subject to paragraph 3 of subsection (1) if a notice of the application for first registration that contained an accurate description of the parcel, or of a former larger parcel of which the parcel is a part, was served upon the person who at the time of giving the notice was the owner, mortgagee, chargee or purchaser, or his assignee, under a registered instrument of adjoining land and no objection to the first registration was filed with the land registrar within the time allowed by the notice. Where owner
of adjoining
land has
no right
R.S.O. 1970, c. 234, s. 51 (2, 3); 1979, c. 93, s. 51.

(4) An application under section 30 shall be deemed to be an action for the recovery of land within the meaning of the *Limitations Act*. Application
under s. 30
deemed action
for recovery
of land
R.S.O. 1980,
c. 240
1979, c. 93, s. 19.

(5) Paragraph 7 of subsection (1) does not confer upon a person claiming a mechanic's lien any greater right than he would have if the land were registered under the *Registry Act*. Application of
subs. (1), par.
7
R.S.O. 1980,
c. 445
R.S.O. 1970, c. 234, s. 51 (4).

Writs of
execution

(6) The title of the registered owner for the time being of land is subject to enforceable writs of execution against him that have been recorded under section 137, but no writ of execution against a prior registered owner is enforceable in respect of the land unless a note of such writ has been entered in the title register. R.S.O. 1970, c. 234, s. 51 (6); 1980, c. 49, s. 5.

Estate of
first regis-
tered owner
with
absolute title

48. The first registration of a person as owner of land, in this Act referred to as first registered owner with an absolute title, vests in the person so registered an estate in fee simple in the land, together with all rights, privileges and appurtenances, free from all estates and interests whatsoever, including estates and interests of Her Majesty, that are within the legislative jurisdiction of Ontario, but subject to the following:

1. The encumbrances, if any, entered on the register.
2. The liabilities, rights and interests that are declared for the purposes of this Act not to be encumbrances, unless the contrary is expressed on the register.
3. Where the first registered owner is not entitled for his own benefit to the land registered, then as between him and any persons claiming under him, any unregistered estates, rights, interests or equities to which such person may be entitled. R.S.O. 1970, c. 234, s. 52.

Estate of
owner
registered
with a
qualified
title

49.—(1) The registration of a person as first registered owner with a qualified title has the same effect as the registration of such person with an absolute title, except that registration with a qualified title does not affect or prejudice the enforcement of any estate, right or interest appearing by the register to be excepted. R.S.O. 1970, c. 234, s. 53 (1).

Change from
qualified title
to absolute title

(2) The registered owner of land with a qualified title may at any time apply to the land registrar to be registered as owner of the land with an absolute title, but the applicant shall not be so registered unless the Director of Titles is satisfied that the estate, right or interest in respect of which the title is qualified is no longer capable of enforcement, or unless a bond or covenant is furnished as provided by section 58. R.S.O. 1970, c. 234, s. 53 (2); 1972, c. 132, s. 14; 1979, c. 93, s. 51.

Estate
of first
registered
owner with
possessory
title

50.—(1) The registration of a person as first registered owner with a possessory title only does not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title of the first registered owner, and subsisting or capable of arising at the time of registration of such owner, but otherwise has the same effect as registration of a person with an absolute title.

(2) The registered owner of land with a possessory title only may at any time apply to the land registrar to be registered as owner of the land with an absolute or qualified title, but the applicant shall not be so registered until the title is approved by the land registrar in the same manner as if the application were for first registration with an absolute or qualified title.

Change from possessory title to absolute or qualified title

(3) After the expiration of ten years from the date of registration of a person as the registered owner with a possessory title only, the then registered owner of the land may, upon payment of the prescribed fees, apply to the land registrar to be entered as owner with an absolute or qualified title, and the land registrar may, either forthwith or after requiring such evidence to be furnished and notices to be given as he considers expedient, register the applicant as owner in fee simple with an absolute title or qualified title, subject to such encumbrances, if any, as the condition of the title requires. R.S.O. 1970, c. 234, s. 54; 1979, c. 93, s. 51.

Application to be registered as absolute or qualified title after ten years

51. The registration of a person as first registered owner of leasehold land, with a declaration that the lessor had an absolute title to grant the lease under which the land is held, vests in such person the land comprised in the registered lease relating to the land for all the leasehold estate therein described with all implied or expressed rights, privileges and appurtenances, free from all estates and interests whatsoever, including estates and interests of Her Majesty, that are within the legislative jurisdiction of Ontario, but subject to the following:

Estate of first registered owner of leasehold land with a declaration of absolute title of lessor to grant lease

1. All implied and express covenants, obligations and liabilities incident to such leasehold estate.
2. The encumbrances, if any, entered on the register.
3. The liabilities, rights and interests that affect the leasehold estate and that are by this Act declared not to be encumbrances in the case of registered freehold land, unless the contrary is expressed on the register.
4. Where the first registered owner is not entitled for his own benefit to the land registered, then as between himself and any person for whom he holds or claiming under him, any unregistered estates, rights, interests or equities to which such person may be entitled. R.S.O. 1970, c. 234, s. 55.

52. The registration of a person as first registered owner of leasehold land, without a declaration of the title of the lessor, does not affect or prejudice the enforcement of any estate, right or interest affecting or in derogation of the title of the lessor to grant the lease under which the land is held, but, save as aforesaid, has

Estate of first registered owner of leasehold land without a declaration of title of lessor to grant lease

the same effect as the registration of a person as first registered owner of leasehold land with a declaration that the lessor had an absolute title to grant the lease under which the land is held. R.S.O. 1970, c. 234, s. 56.

Lessor may
be declared
to have a
qualified title
to grant lease

53.—(1) Where on the examination of the title of a lessor by the land registrar it appears to him that the title of the lessor to grant the lease under which the land is held can be established only for a limited period or subject to certain reservations, the land registrar may, by an entry made in the register, except from the effect of registration any estate, right or interest arising before a specified date or arising under a specified instrument, or otherwise particularly described in the register, and the title of a lessor subject to such excepted estate, right or interest shall be deemed to be a qualified title.

Effect of
registration

(2) The registration of a person as first registered owner of leasehold land, with a declaration that the lessor had a qualified title to grant the lease under which the land is held, has the same effect as the registration of such person with a declaration that the lessor had an absolute title to grant the lease under which the land is held, except that registration with the declaration of a qualified title does not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted. R.S.O. 1970, c. 234, s. 57; 1979, c. 93, s. 51.

No title
by adverse
possession,
etc.
R.S.O. 1980,
c. 240

54.—(1) Notwithstanding any provision of this Act, the *Limitations Act* or any other Act, no title to and no right or interest in land registered under this Act that is adverse to or in derogation of the title of the registered owner shall be acquired hereafter or be deemed to have been acquired hertofore by any length of possession or by prescription. R.S.O. 1970, c. 234, s. 58 (1); 1980, c. 49, s. 6.

Operation of
section

(2) This section does not prejudice, as against any person registered as first owner of land with a possessory title only, any adverse claim in respect of length of possession of any other person who was in possession of the land at the time when the registration of the first owner took place. R.S.O. 1970, c. 234, s. 58 (2).

R.S.O. 1980,
c. 445
not to apply
to land under
this Act

55.—(1) A certificate by the land registrar of the first registration of an owner under this Act shall be registered in the registry division in which the land is situate, and thereafter the *Registry Act* ceases to apply to the land.

Particulars
to be stated
in certificate
for registry
office

(2) The certificate, besides describing the land, shall state the date of the first registration, the number of the parcel and the register in which the land is registered, and the registrar shall in his abstract index enter the number of the parcel and the register

as given in the certificate. R.S.O. 1970, c. 234, s. 59; 1979, c. 93, s. 51.

56.—(1) Where land is registered subject to mortgages existing thereon at the time of the first registration, the mortgages shall be noted in the register in the same order as they are registered in the registry office, if such mortgages have been so registered, or the dates of the respective registrations thereof shall be stated, but this shall not be taken as an affirmation that such mortgages rank in the order in which they were registered or in the order in which they are noted.

Land
subject to
mortgage
at time of
registration

(2) Abstracts of all instruments dealing with such mortgages shall thereafter be entered in the register, and the entry thereof shall be deemed the registration of the instrument, and the rights of the parties interested or claiming to be interested in any such mortgage so far as it affects land under this Act shall, subject to sections 37, 38, 40, 48, 50 and 87 to 90, be decided under the registry law as if the registrations had been made under the *Registry Act*. R.S.O. 1970, c. 234, s. 60.

Abstracts
of instru-
ments

R.S.O. 1980,
c. 445

PART V

ASSURANCE FUND

CONSTITUTION OF FUND, ETC.

57.—(1) An assurance fund, to be known as The Land Titles Assurance Fund, shall be formed for the indemnity of persons who may be wrongfully deprived of land or some estate or interest therein by reason of the land being brought under this Act, or by reason of some other person being registered as owner through fraud, or by reason of a misdescription, omission or other error in a certificate of ownership of land or of a charge or in an entry on the register. R.S.O. 1970, c. 234, s. 61 (1).

Assurance
Fund

(2) Where the amount standing to the credit of the Assurance Fund is less than \$1,000,000, the Assurance Fund shall be increased by payment into it from the Consolidated Revenue Fund of an amount fixed by the Lieutenant Governor in Council.

Idem

(3) Money paid under subsection (2) shall be paid into the Supreme Court. 1979, c. 93, s. 20 (1), *part*.

Money paid
into
court

(4) Subject to subsection (5), money standing to the credit of the Assurance Fund and payments received under subsection (2) shall be credited to The Land Titles Assurance Fund Account and shall be invested from time to time under the direction of the Finance Committee of the Supreme Court, and, subject to subsection (6),

Land Titles
Assurance
Fund
Account

the interest and income derived therefrom shall be credited to the same account. R.S.O. 1970, c. 234, s. 61 (5); 1979, c. 93, s. 20 (2).

Payment to
Treasurer of
Ontario

(5) The moneys in court at the credit of the Assurance Fund shall on his demand be paid to the Treasurer of Ontario.

Treasurer
to issue
stock for
sums received
from
Assurance
Fund

(6) The Treasurer of Ontario, on receipt of the moneys paid to him under subsection (5), shall issue to the Accountant of the Supreme Court in trust Ontario Government stock to an amount equal to the sum so received, and the stock shall represent the Assurance Fund and be available for the same purposes.

Conditions
of issue

(7) The stock shall be paid or may be redeemed at such time and shall be subject to such conditions as to inscription, registration and transfer as the Lieutenant Governor in Council considers advisable, and shall bear interest at the rate of 2½ per cent per annum.

Charge on
Consolidated
Revenue
Fund

(8) The stock, together with the interest thereon, shall be charged upon and paid out of the Consolidated Revenue Fund. R.S.O. 1970, c. 234, s. 61 (6-9).

Indemnifica-
tion of
Assurance
Fund

58. The land registrar may require any applicant for registration to indemnify The Land Titles Assurance Fund against loss by a bond or covenant to Her Majesty, either with or without sureties, or by such other security as he considers expedient. R.S.O. 1970, c. 234, s. 62; 1979, c. 93, s. 51.

Land Titles
Survey Fund

59.—(1) Where the amount of The Land Titles Assurance Fund exceeds \$500,000 at the beginning of a calendar year, the Accountant of the Supreme Court shall, at the beginning of the following year, transfer to a special account, to be maintained by him and entitled "The Land Titles Survey Fund", the amount of interest and income that was credited to The Land Titles Assurance Fund during the calendar year first mentioned. R.S.O. 1970, c. 234, s. 63 (1).

Applications
for financial
assistance

(2) An application for financial assistance from The Land Titles Survey Fund may be made to the Director of Land Registration by,

- (a) a registered owner in respect of the costs of a survey of his land;
- (b) an applicant for first registration under this Act in respect of the costs of a survey of his land;

(c) the council of a municipality in respect of the costs of and incidental to an application under section 31;

(d) an applicant under the *Boundaries Act* in respect of the costs of and incidental to an application under that Act, including survey costs. R.S.O. 1980,
c. 47

(3) The Director of Land Registration may direct that all or a part of the costs mentioned in an application made under subsection (2) be paid out of The Land Titles Survey Fund. Direction
for payment

(4) Upon receipt of a direction of the Director of Land Registration, the Accountant of the Supreme Court shall pay to the person or municipality named in the direction such sum or sums, at such time or times as are stipulated in the direction, out of The Land Titles Survey Fund, so far as that Fund is sufficient for the purpose. Payment
from Fund

(5) The determination by the Director of Land Registration of the amount, if any, to be paid from The Land Titles Survey Fund is not subject to appeal. 1972, c. 132, s. 15. Determina-
tion final

CLAIMS AGAINST FUND

60.—(1) A person wrongfully deprived of land or of some estate or interest therein, by reason of the land being brought under this Act or by reason of some other person being registered as owner through fraud or by reason of any misdescription, omission or other error in a certificate of ownership or charge, or in an entry on the register, is entitled to recover what is just, by way of compensation or damages, from the person on whose application the erroneous registration was made or who acquired the title through the fraud or error. R.S.O. 1970, c. 234, s. 64 (1). Remedy of
person
wrongfully
deprived of
land

(2) A person is not entitled to compensation from The Land Titles Assurance Fund in respect of an interest in land existing at the time the land is brought under this Act unless that interest is registered against the title to the land under the *Registry Act* or notice of it is given to the land registrar before the first registration under this Act of a person as owner of the land. 1979, c. 93, s. 21 (1). Where no
compensation

R.S.O. 1980,
c. 445

(3) Subsection (1) does not render liable any purchaser or mortgagee in good faith for valuable consideration by reason of the vendor or mortgagor having been registered as owner through fraud or error or having derived title from or through a person registered as owner through fraud or error, whether the fraud or error consists in a wrong description of the property or otherwise. Purchaser or
mortgagee in
good faith
for value
not liable

Liability of
Fund to
compensate
person
wrongfully
deprived

(4) If the person so wrongfully deprived is unable by such means or otherwise to recover just compensation for his loss, he is entitled to have the compensation paid out of the Assurance Fund, so far as it is sufficient for that purpose having reference to other charges thereon, if the application is made within six years from the time of having been so deprived or, in the case of a person under the disability of minority, mental incompetency or unsoundness of mind, within six years from the date at which the disability ceased. R.S.O. 1970, c. 234, s. 64 (2, 3).

Application
for com-
pensation
from
Assurance
Fund

(5) A person claiming to be entitled to payment of compensation out of The Land Titles Assurance Fund shall apply to the Director of Titles.

Hearing

(6) Except where he determines the claim be paid in full, the Director of Titles shall hold a hearing, and the claimant and such other persons as the Director of Titles may specify are parties to the proceedings before him.

How com-
pensation
to be
determined

(7) The liability of the Assurance Fund for compensation and the amount of compensation shall be determined by the Director of Titles, and the costs of the proceedings are in the discretion of the Director of Titles.

Claimant
to be
notified

(8) The Director of Titles shall serve notice of his determination under subsection (6) by first class mail on the claimant.

Appeal

(9) Where the Director of Titles determines that compensation should be paid but that the claim not be paid in full, the claimant, if he intends to appeal, shall, within a period of twenty days after the date of mailing of the notice under subsection (7), serve on the Director of Titles notice of his intention to appeal under section 26, and the Director of Titles shall not certify under subsection (10) the amount to the Treasurer of Ontario if a notice of appeal is received within that period or until after the expiry of that period if no notice of appeal is received.

Payment
out of
Assurance
Fund

(10) Subject to subsection (9), the Director of Titles shall certify to the Treasurer of Ontario any amount found to be payable under this section, and, upon receipt of the Director of Titles' certificate, the Treasurer shall pay the amount to the person entitled thereto out of the Consolidated Revenue Fund, and the sums so paid out shall be credited as payments on account of the stock in the hands of the Accountant of the Supreme Court, and the amount of the stock shall be reduced accordingly.

How
Assurance
Fund to be
recouped

(11) Any sum paid out of the Assurance Fund may afterwards, for the benefit of the Assurance Fund, be recovered by action in

the name of the Director of Titles from the person on whose application the erroneous registration was made or who acquired the title through the fraud or error or from his estate, and the Director of Titles' certificate of the payment out of the Assurance Fund is sufficient proof of the debt.

(12) Where a registered disposition would be absolutely void if unregistered or where the effect of the error would be to deprive a person of land of which he is in possession or in receipt of the rents and profits, the Director of Titles may, in the first instance or after a reference to the court, direct the rectification of the register and, in the case of rectification, the person suffering by the rectification is entitled to the compensation provided for by this section. 1979, c. 93, s. 21 (2). Rectification
of register

61.—(1) Where a person makes a claim upon The Land Titles Assurance Fund for compensation in respect of land patented as mining land or in respect of land the chief value of which consists in the ores, mines or minerals therein and it appears that he is entitled to recover in respect of the land or of some interest therein, in determining the amount of compensation to be paid to him, the entire value of the land shall not be taken at a greater sum than twice the amount that was paid for the original grant from the Crown. Valuation
of mining
lands

(2) Where the amount that was paid for the original grant from the Crown was paid in respect of other land in addition to that for which a claim is so made without it appearing what amount was paid in respect of the particular parcel of land with reference to which the claim is made, the amount so paid, or the portion thereof as to which the fact may not appear to be otherwise, shall be deemed to have been paid *pro rata* in accordance with the acreage or other superficial content of the whole parcel or of the various parcels in respect of which the amount was paid. R.S.O. 1970, c. 234, s. 65. Apportion-
ment
pro rata

62.—(1) No person is entitled to recover out of the Assurance Fund any compensation, No com-
pensation

(a) where the claim is founded upon a right existing at the time of the first registration of the land and the state of the title of the land at that time was such that the person who was first registered, or the person on whose nomination or authorization the registration was made, by a duly registered conveyance could have conferred, as against the claimant, a valid title to a purchaser in good faith for valuable consideration without notice of any defect in the title, and no sufficient caution had been registered and was in force when the application for first registration was made or a patent was forwarded for when
person first
registered
could have
conveyed
good title
to purchaser

registration and the land registrar had not actual notice of the defect prior to the first registration;

where
claimant had
notice of
registration
proceedings

- (b) where the claimant, by direction of the land registrar or in accordance with the practice of his office, had been served with a notice of the proceedings being had in that office, whether such proceedings were prior or subsequent to first registration, and failed to act in accordance with the requirements of the notice or if the land registrar had adjudicated against him and he had failed to prosecute successfully an appeal against the decision of the land registrar; or

where
claimant's
negligence
has caused
loss

- (c) where the claimant has caused or substantially contributed to the loss by his act, neglect or default, and the omission to register a sufficient caution, notice, inhibition or restriction to protect a mortgage by deposit or other equitable interest or any unregistered right, or other equitable interest or any unregistered interest or equity created under section 74 or otherwise shall be deemed neglect within the meaning of this clause. R.S.O. 1970, c. 234, s. 66 (1); 1979, c. 93, ss. 22, 51.

Interpre-
tation

(2) In this section, "claimant" includes the person actually making the claim and any person through whom he claims who he alleges was wrongfully deprived of land or of some estate or interest therein. R.S.O. 1970, c. 234, s. 66 (2).

PART VI

PART OWNERS

Registration
of part
owners

63.—(1) Any two or more persons entitled concurrently or successively, or partly in one mode and partly in another, to such estates, rights or interests in land as together make up such an estate as would, if vested in one person, entitle him to be registered as owner of the land may apply to the land registrar to be registered as joint owners in the same manner and with the same incidents, so far as circumstances admit, in and with which it is in this Act declared that an individual owner may be registered.

Entry

(2) Where several persons are so registered as owners, the entry may, if the parties so desire, define the estates, rights and interests, other than trust estates, rights and interests, to which the owners are respectively entitled, and such entry may be made either upon first registration or subsequently in case the estates, rights or interests so arise. R.S.O. 1970, c. 234, s. 67; 1979, c. 93, s. 51.

64.—(1) No person shall be registered as owner of an undivided share in freehold or leasehold land or of a charge apart from the other share or shares. R.S.O. 1970, c. 234, s. 68 (1). Undivided shares

(2) Where the extent of a co-owner's interest is not shown on the register, he may, Rights of part owner

(a) transfer or charge a specified share in the land or transfer a share in the charge, as the case may be, if the land registrar is satisfied, by an affidavit of all co-owners setting out the percentage or fractional interest that belongs to the transferor or chargor, that the transferor or chargor has a sufficient interest to transfer or charge such share; or

(b) transfer or charge all of his unspecified share. 1979, c. 93, s. 23.

65.—(1) A notice of an express, implied or constructive trust shall not be entered on the register or received for registration. Trusts not to be entered

(2) Describing the owner of freehold or leasehold land or of a charge as a trustee, whether the beneficiary or object of the trust is or is not mentioned, shall be deemed not to be a notice of a trust within the meaning of this section, nor shall such description impose upon any person dealing with the owner the duty of making any inquiry as to the power of the owner in respect of the land or charge or the money secured by the charge, or otherwise, but, subject to the registration of any caution or inhibition, the owner may deal with the land or charge as if such description had not been inserted. Description of owner as a trustee

(3) Where two or more owners are described as trustees, the property shall be held to be vested in them as joint tenants unless the contrary is expressly stated. Owners described as trustees to be joint tenants

(4) Nothing in this section prevents the registration of a charge given for the purpose of securing bonds or debentures of a corporation, but the registration of such a charge is not a guarantee that the proceedings necessary to render the charge valid have been duly taken. R.S.O. 1970, c. 234, s. 69. Savings

66. Any person registered in the place of a deceased owner or to whom a patent is issued as executor or administrator or in any representative capacity shall hold the land or charge, in respect of which he is registered, upon the trusts and for the purposes to which the same is applicable by law and subject to any unregistered estates, rights, interests or equities subject to which the deceased owner held the same, but otherwise in all respects, and in particular as respects any registered dealings with such land or Nature of title of registered fiduciary owners

charge, he shall be in the same position as if he had taken the land or charge under a transfer for a valuable consideration. R.S.O. 1970, c. 234, s. 70.

Registration of
trustees under
R.S.O. 1980,
c. 448

67.—(1) Where registered land or an interest therein is acquired by trustees under the *Religious Organizations' Lands Act*, it shall be registered in the name of the religious organization without setting out the purposes or trusts on which the land or interest is held. 1979, c. 93, s. 24 (1).

Registration
of other
trustees
R.S.C. 1970,
c. B-3

(2) A person who has been appointed as a trustee under the *Bankruptcy Act* (Canada) or under any other Act of Canada or Ontario or by the court, upon proof of his entitlement satisfactory to the land registrar, may be registered as the owner of registered land or of an interest therein, and he may transfer the same upon proof of compliance with the Act or order under which he was appointed. R.S.O. 1970, c. 234, s. 71 (2); 1979, c. 93, s. 51.

Trustees
of pension
funds
R.S.C. 1952,
c. 148

(3) Where a charge is made or transferred to the trustee or trustees of a registered pension fund or plan within the meaning of subsection 248 (1) of the *Income Tax Act* (Canada), and the charge or transfer of charge has attached thereto an affidavit made by one of the trustees or a solicitor deposing that the fund or plan is so registered, the chargee or transferee may be described in the charge or transfer of charge as the trustee or trustees, naming the fund or plan, and the individual names of the trustee or trustees are not required. 1972, c. 132, s. 17.

Idem

(4) A transfer or cessation of a charge made by the trustee or trustees mentioned in subsection (3) shall not be registered unless there is attached thereto an affidavit made by the trustee or, where there is more than one trustee, by one of them or by the solicitor for the trustee or trustees, deposing that the signing trustee is, or trustees are, authorized to execute the transfer or cessation. 1979, c. 93, s. 24 (2).

Special
entry in
certain cases

68.—(1) Upon the registration of two or more persons as owners of the same land or of the same charge, an entry may, with their consent, be made on the register to the effect that, when the number of such owners is reduced below a certain specified number, no registered disposition of the land or charge shall be made except under the order of the court.

No sur-
vivorship

(2) In such a case, the words "No Survivorship" in the entry mean that, if any one of the owners should die, no registered disposition of the land or charge shall be made except under order of the court. R.S.O. 1970, c. 234, s. 73.

PART VII

SUBSEQUENT REGISTRATIONS

GENERAL

69. Every transfer or charge signed by a registered owner, or others claiming by transfer through or under him, purporting to transfer or charge freehold or leasehold land, or an interest therein, capable of being registered, or purporting to transfer a charge, shall, until cut out by a conflicting registration, confer upon the person intended to take under the transfer or charge a right to be registered as the owner of the land or charge and, where a person applies to be registered under this section, the land registrar may, either forthwith or after requiring such notices to be given as he considers expedient, register the applicant as owner, subject to such encumbrances, if any, as the condition of the title requires, notwithstanding that the transfer or charge has been executed or bears date prior to the entry of the transferor or chargor as the owner of the land or charge. R.S.O. 1970, c. 234, s. 74; 1979, c. 93, s. 51.

Right of transferees and chargees to registration

70. Subject to section 67, no person, other than a corporation, may be shown as the registered owner of land or a charge unless the person is described by his surname and by at least one given name in full. 1979, c. 93, s. 25.

Description of registered owner

71.—(1) No person, other than the registered owner, is entitled to transfer or charge registered freehold or leasehold land by a registered disposition.

Dealings with registered land

(2) Subject to the maintenance of the estate and right of the registered owner, a person having a sufficient estate or interest in the land may create estates, rights, interests and equities in the same manner as he might do if the land were not registered. R.S.O. 1970, c. 234, s. 75.

Unregistered estates, etc.

72.—(1) Where by an order of a court of competent jurisdiction or where by virtue of the operation of an Act of Canada or Ontario registered land or any interest therein is stated by the order or Act to vest, be vested or become vested in, or belong to, the Crown in right of Canada or Ontario or any person other than the registered owner of the land, the registered owner shall be deemed for the purposes of this Act to remain the owner thereof,

Meaning of "vest" or "belong"

- (a) until an application to be registered as owner is made by or on behalf of the Crown or other person in or to whom the land is stated to be vested or to belong; or
- (b) until the land is transferred to the Crown or person by the registered owner,

as the case may be, in accordance with the order or Act. R.S.O. 1970, c. 234, s. 76 (1).

Exception

(2) Subsection (1) does not apply to,

R.S.O. 1980,
c. 148

(a) an expropriation plan registered in accordance with the *Expropriations Act*; or

R.S.O. 1980,
c. 421

(b) a plan registered in accordance with the *Public Transportation and Highway Improvement Act* in the highways register mentioned in subsection 75 (2) of this Act. R.S.O. 1970, c. 234, s. 76 (2); 1971, c. 61, s. 1; 1972, c. 1, s. 43 (3).

Power of
attorney
authorized

73.—(1) A person may, under a power of attorney, authorize another person to act for him in respect of any land or interest therein under this Act.

Registration

(2) A power of attorney or a certified copy thereof may be registered in the prescribed manner.

Revocation

(3) No registered power of attorney shall be deemed to be revoked until a revocation thereof is registered or evidence is filed with the land registrar showing that it is no longer in force. R.S.O. 1970, c. 234, s. 77; 1979, c. 93, s. 51.

Protection
of un-
registered
estates

74.—(1) Any person entitled to or interested in any unregistered estates, rights, interests or equities in registered land may protect the same from being impaired by any act of the registered owner by entering on the register such notices, cautions, inhibitions or other restrictions as are authorized by this Act or by the Director of Titles. R.S.O. 1970, c. 234, s. 78.

Effect of
registration

(2) Where a notice, caution, inhibition or restriction is registered, every registered owner of the land and every person deriving title through him, excepting owners of encumbrances registered prior to the registration of such notice, caution, inhibition or restriction, shall be deemed to be affected with notice of any unregistered estate, right, interest or equity referred to therein. 1972, c. 132, s. 18.

Effect of
unregistered
instruments

75.—(1) No person, other than the parties thereto, shall be deemed to have any notice of the contents of any instruments, other than those mentioned in the existing register of title of the parcel of land or that have been duly entered in the books of the office kept for the entry of instruments received or are in course of entry. R.S.O. 1970, c. 234, s. 79 (1).

Highways
register

(2) For the purposes of subsection (1), the highways register mentioned in clause 162 (c) shall be deemed to be a book

kept for the entry of instruments. R.S.O. 1970, c. 234, s. 79 (2); 1972, c. 1, s. 43 (4).

(3) Subject to the regulations, the Trans-Canada Pipe Line register established under clause 162 (c) shall be deemed, for the purposes of this Act, to be a register of the title of land or interests therein, including easements, owned by TransCanada PipeLines Limited. 1979, c. 93, s. 26.

Trans-Canada
Pipe Line
register

76.—(1) Where a person who, if not under disability, might have made an application, given consent, or done an act, or been party to a proceeding under this Act is a minor, a mentally defective person or a mentally incompetent person, the guardian of the minor or committee of the estate of the mentally defective person or mentally incompetent person may make such application, give such consent, do such act or be party to such proceeding as such person if free from disability might have made, given, done or been party to, and shall otherwise represent such person for the purposes of this Act.

Where
party
under
disability

(2) Where the minor has no guardian or the mentally defective person or mentally incompetent person has no committee of his estate or if a person yet unborn is interested, the Official Guardian shall act with like power or the land registrar may appoint a person with like power to act for the minor, mentally defective person, mentally incompetent person or person yet unborn. R.S.O. 1970, c. 234, s. 80; 1979, c. 93, s. 51.

Idem

77. Where, on an application for the registration of an instrument after first registration or for the registration of a transmission, the land registrar is unable to come to a clear conclusion as to the action that he should take, he shall delay making the required entry until he has stated the facts to the Director of Titles for his opinion, and in submitting the case the land registrar shall state his own view and his reasons therefor. R.S.O. 1970, c. 234, s. 81; 1979, c. 93, s. 51.

Submission
of case to
Director of
Titles where
land registrar
in doubt

78. Upon the application of the registered owner, any entry in the register of his title may be amended by the land registrar to reflect the effect of other statutes or orders of a court or a change in the name of the owner, or such other changes as have occurred in fact. R.S.O. 1970, c. 234, s. 82; 1979, c. 93, s. 51.

Amendment
of register

79. In respect of the first registration of land or any subsequent registration of an instrument under this Act, the land registrar may require such proof as he considers sufficient, or as is prescribed by the Director of Titles, of compliance with any Act of Canada or Ontario that if not complied with would affect the title

Proof of
compliance
with other
statutes

of the first registered owner or the title or interest of the person taking under the subsequent instrument. R.S.O. 1970, c. 234, s. 83; 1979, c. 93, s. 51.

Instruments
deemed
applications
to amend
register

80.—(1) Except as otherwise provided by this Act, every instrument presented for registration by which, when registration thereof is completed, an interest in registered land is created, transferred or terminated shall be deemed to be an application to the land registrar to amend the registered title of the land mentioned therein.

Idem

(2) A plan, certificate, order or by-law made under an Act of Canada or Ontario, which when registered has the effect of transferring, vesting or forfeiting registered land or an interest therein, shall be deemed to be an instrument for the purposes of subsection (1).

Certain
instruments
not within
subs. (1)

(3) An agreement or lease or other instrument in respect of which no provision is made by this Act for registration but which is filed in support of or mentioned in a caution, notice of lease or other notice authorized by this Act shall be deemed not to be registered nor to be an instrument for the purposes of subsection (1). R.S.O. 1970, c. 234, s. 84; 1979, c. 93, s. 51.

Time of
receipt to
be noted

81.—(1) The day, hour and minute of the receipt of each instrument presented for registration and of each copy of a writ or lien received under section 137 shall be noted thereon by the officer or clerk receiving the instrument or copy.

Order of
registration

(2) Subject to the rules, an instrument received for registration shall be registered in the order of time in which it is so received, unless before registration is completed it is withdrawn or the land registrar decides that it contains a material error, omission or deficiency or that there is evidence lacking that he considers requisite or declines registration for any other reason, and notifies the parties or their solicitors accordingly within twenty-one days after being so received and allows a period of time not less than seven and not more than thirty days from the date of such notification for correction of the error, omission or deficiency or for furnishing evidence and, when the error, omission or deficiency is corrected or evidence furnished within the time allowed, the instrument has priority as if it had been correct in the first instance, but, if the error, omission or deficiency is not corrected or if evidence is not furnished within the time allowed or if the person desiring registration fails to appeal successfully from the decision, the land registrar may proceed with other registrations affecting the land as if the instrument had not been presented for registration, and the land registrar shall be deemed not to be affected with notice of the contents of the instrument.

(3) Registration of an instrument is complete when the entry in the proper register and particulars of registration thereof on the instrument are signed by the land registrar, his deputy or a signing officer, and the time of receipt of the instrument shall be deemed to be the time of its registration.

When registration complete

(4) When registered, an instrument shall be deemed to be embodied in the register and to be effective according to its nature and intent, and to create, transfer, charge or discharge, as the case requires, the land or estate or interest therein mentioned in the register.

Effect of registration

(5) Subject to any entry to the contrary in the register and subject to this Act, instruments registered in respect of or affecting the same estate or interest in the same parcel of registered land as between themselves rank according to the order in which they are entered in the register and not according to the order in which they were created, and, notwithstanding any express, implied or constructive notice, are entitled to priority according to the time of registration.

Priorities

(6) Upon registration of an instrument in the prescribed form, the rights of priority acquired by registration may be postponed to rights acquired or claimed under another registered instrument.

Postponement of registered rights

R.S.O. 1970, c. 234, s. 85; 1979, c. 93, s. 51.

82. Notwithstanding any statute or rule of law, a charge or transfer of registered land may be duly made by an instrument not under seal and, if so made, the instrument and every agreement, stipulation and condition therein has the same effect for all purposes as if made under seal, but this section does not apply to the execution of a transfer or charge by a corporation. R.S.O. 1970, c. 234, s. 86; 1972, c. 132, s. 20, *revised*.

Charges and transfers may be made without seal

83. The land registrar may enter as owner of freehold or leasehold land or of a charge any person who is entitled to the land or charge through the death of the owner, although the deceased had not been registered as owner, or any person who is entitled by virtue of the exercise of a power conferred by a statute, will, deed or other instrument, whether the person so entitled claims directly from the deceased or directly under the power, or through any other person entitled by virtue of the death or power or through a succession of transfers or transmissions. R.S.O. 1970, c. 234, s. 87; 1979, c. 93, s. 51.

Right to registration

84. Where an instrument made in accordance with the forms in use or sufficient to pass an estate or interest in land under the *Registry Act* deals with land under this Act, the land registrar

Registration of instruments not in prescribed form
R.S.O. 1980, c. 445

may, in his discretion, register it under this Act and, when so registered, it has the same effect as if made in the prescribed form. R.S.O. 1970, c. 234, s. 89; 1979, c. 93, s. 51.

Prohibitions
on taking
affidavits

85. No person authorized to take affidavits shall take an affidavit,

(a) as to the execution of an instrument to which he is a party; or

(b) as to the execution of an instrument unless the witness has subscribed on the instrument his name in his handwriting as witness. 1979, c. 93, s. 27.

TRANSFERS

Transfer
of land

86.—(1) A registered owner may transfer land or any part thereof in the prescribed manner.

Registering
transferee
as owner

(2) The transfer shall be completed by the land registrar entering on the register the transferee as owner of the land transferred, and the transferor shall be deemed to remain owner of the land until the registration of the transfer has been completed in accordance with this Act. R.S.O. 1970, c. 234, s. 90; 1979, c. 93, s. 51.

Estate of
transferee
for valuable
considera-
tion of land
with absolute
title

87. A transfer for valuable consideration of land registered with an absolute title, when registered, confers on the transferee an estate in fee simple in the land transferred, together with all rights, privileges and appurtenances, subject to,

(a) the encumbrances, if any, entered or noted on the register; and

(b) the liabilities, rights and interests, if any, as are declared for the purposes of this Act not to be encumbrances, unless the contrary is expressed on the register,

and as to such rights, privileges and appurtenances, subject also to any qualifications, limitation or encumbrance to which the same are expressed to be subject in the register, or where such rights, privileges and appurtenances are not registered, then subject to any qualification, limitation or encumbrance to which the same are subject at the time of the transfer, but free from all estates and interests whatsoever, including estates and interests of Her Majesty, that are within the legislative jurisdiction of Ontario. R.S.O. 1970, c. 234, s. 91.

Estate of
transferee
for valuable
considera-
tion of land
with qualified
title

88. A transfer for valuable consideration of land registered with a qualified title, when registered, has the same effect as a

transfer for valuable consideration of the same land registered with an absolute title, except that such transfer does not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted. R.S.O. 1970, c. 234, s. 92.

89. A transfer for valuable consideration of land registered with a possessory title does not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the title of the first registered owner, and subsisting, or capable of arising, at the time of the first registration, but otherwise, when registered, has the same effect as a transfer for valuable consideration of the same land registered with an absolute title. R.S.O. 1970, c. 234, s. 93.

Estate of transferee for valuable consideration of land with possessory title

90. A transfer of registered land, made without valuable consideration, is subject, so far as the transferee is concerned, to any unregistered estates, rights, interests or equities subject to which the transferor held the same, but otherwise, when registered, in all respects, and in particular as respects any registered dealings on the part of the transferee, has the same effect as a transfer of the same land for valuable consideration. R.S.O. 1970, c. 234, s. 94.

Estate of voluntary transferee of land

91. A purchaser for valuable consideration when registered is not affected by the omission to send any notice directed to be given by this Act, or by the non-receipt thereof. R.S.O. 1970, c. 234, s. 95.

Purchasers for value not affected by omission to send notices

92.—(1) In this section,

Interpretation

(a) “owner to uses” means a transferee registered under a transfer to uses;

(b) “transfer to uses” means a transfer expressed to be given to such uses as the transferee may appoint by transfer, charge or will;

(c) “unencumbered interest” means the interest that an owner to uses is capable of appointing.

(2) A transfer to uses may be registered.

Transfer to uses may be registered

(3) An owner to uses may exercise his power of appointment by a transfer or charge in the prescribed form or by his will.

Exercise of power of appointment

(4) An appointment by way of charge by an owner to uses does not exhaust his power of appointment.

Charge does not exhaust power

(5) Notwithstanding the registration of a cessation of a charge,

Effect of cessation of charge

(a) that was made by way of appointment by the owner to uses; or

(b) to which the land was subject when he became the owner to uses,

the owner to uses may exercise his power of appointment as though the charge had not been made.

Effect of
default of
appointment

(6) An owner to uses who dies without having exercised his power of appointment by transfer, charge or will shall be deemed to have appointed the land by way of transfer to himself immediately before his death.

Idem

(7) An owner to uses who has appointed the land or a part thereof in respect of which he has a power of appointment by way of charge and who dies without having appointed by way of transfer or will shall be deemed to have appointed the unencumbered interest in the land by way of transfer to himself immediately before his death. R.S.O. 1970, c. 234, s. 96 (1-7).

CHARGES AND ENCUMBRANCES

Creation of
charges

93.—(1) A registered owner may in the prescribed manner charge the land with the payment at an appointed time of any principal sum of money either with or without interest or as security for any other purpose and with or without a power of sale. R.S.O. 1970, c. 234, s. 98 (1).

What charge
shall contain

(2) A charge that secures the payment of money shall contain the amount of the principal sum that the charge secures, the rate of interest and the periods of payment including the due date. 1979, c. 93, s. 29 (1).

Effect of
charge when
registered

(3) The charge, when registered, confers upon the chargee a charge upon the interest of the chargor as appearing in the register subject to the encumbrances and qualifications to which his interest is subject, but free from any unregistered interests in the land.

Where
advances
under
registered
charge to
have
priority
over
subsequent
charges

(4) A registered charge is, as against the chargor, his heirs, executors, administrators, assigns and every other person claiming by, through or under him, a security upon the land thereby charged to the extent of the money or money's worth actually advanced or supplied under the charge, not exceeding the amount for which the charge is expressed to be a security, notwithstanding that the money or money's worth, or some part thereof, was advanced or supplied after the registration of a transfer, charge or

other instrument affecting the land charged, executed by the chargor, his heirs, executors or administrators and registered subsequently to the first-mentioned charge, unless, before advancing or supplying the money or money's worth, the registered owner of the first-mentioned charge had actual notice of the execution and registration of such transfer, charge or other instrument, and the registration of such transfer, charge or other instrument after the registration of the first-mentioned charge does not constitute actual notice.

(5) An instrument in the nature of a deed of trust and mortgage that provides for the issuance of bonds or debentures may, upon the authorization of the parties thereto or their solicitors, be registered as a charge upon the lands of the grantor, and the entry in the register shall state the aggregate principal sum and the rate of interest of such bonds or debentures. Bond mortgage may be registered as charge upon authorization of parties

(6) The authorization mentioned in subsection (5) shall identify the lands to be charged in each land registry office for a land titles division and state the aggregate principal sum and interest rate of the bonds or debentures mentioned in that subsection. R.S.O. 1970, c. 234, s. 98 (3-6). What to be included in the authorization

(7) A charge registered under subsection (5) may be discharged by a cessation in the prescribed form. R.S.O. 1970, c. 234, s. 98 (9). Cessation

(8) A charge in the form of a debenture or similar instrument shall not be registered unless the name of the person entitled to receive the money payable thereunder and to give a discharge thereof is set out in the instrument. 1972, c. 132, s. 23. Debentures

94.—(1) Where a registered charge of freehold land is created, there shall be implied on the part of the registered owner of the land at the time of the creation of the charge, his heirs, executors, administrators and successors, subject to any express provision in the instrument that created the charge or in any other registered instrument related thereto, covenants with the registered owner for the time being of the charge, Implied covenant to pay charges

(a) to pay the principal sum charged and interest, if any, thereon at the appointed time and rate, and all taxes, rates, charges, rents, statute labour or other impositions theretofore or thereafter imposed or charged on the land, and that, in case of default, all payments made by the owner of the charge may be added to the principal sum and bear interest; and

(b) if the principal sum or any part thereof is unpaid at the appointed time, to pay interest half-yearly at the

appointed rate on so much of the principal sum as for the time being remains unpaid. R.S.O. 1970, c. 234, s. 99 (1); 1980, c. 49, s. 7.

Provision
where charge
expressed to
be made under
R.S.O. 1980,
c. 474

(2) Where a charge, whether or not under seal, is expressed to be made in pursuance to the *Short Forms of Mortgages Act*, or refers thereto, and contains any form of words numbered 1, 2, 6, 7, 11, 13, 14 or 15 in Column One of Schedule B to that Act, whether expressed in the first or third person, such words have the same meaning and effect as the words under the corresponding number in Column Two of that Schedule, and the provisions of that Act apply to the charge.

When
chargee may
distrain for
arrears of
interest

(3) Where in a charge made in pursuance of the *Short Forms of Mortgages Act* there is inserted the provision that the chargee may distrain for arrears of interest, such provision confers upon the chargee the same right of distress as would be conferred upon a mortgagee of land not under the provisions of this Act. R.S.O. 1970, c. 234, s. 99 (2, 3).

Implied
covenants
in charge
of leaseholds

95. Where a registered charge of leasehold land is created, there shall be implied on the part of the registered owner of the leasehold land at the time of the creation of the charge, his heirs, executors, administrators and successors, subject to any express provision in the instrument that created the charge or in any other registered instrument relating thereto, covenants with the registered owner for the time being of the charge,

- (a) that the registered owner of the leasehold land, at the time of the creation of the charge, his executors, administrators or assigns will pay, perform and observe the rent, covenants and conditions by and in the registered lease reserved and contained, and on the part of the lessee to be paid, performed and observed; and
- (b) will keep the owner of the charge, his executors, administrators and assigns indemnified against all actions, suits, expenses and claims on account of the non-payment of such rent, or any part thereof, or the breach of such covenants or conditions or any of them. R.S.O. 1970, c. 234, s. 100; 1980, c. 49, s. 8.

Entry by
owner of
charge

96. Subject to any express provision in the instrument that created the charge or in any other registered instrument relating thereto, the registered owner of a registered charge, for the purpose of obtaining satisfaction of any money due to him under the charge, at any time during the continuance of the charge, may enter upon the land charged, or any part thereof, or into the receipt of the rents and profits thereof, subject nevertheless to the right of any person appearing on the register to be prior encum-

brancer, and to the liability attached to a mortgagee in possession. R.S.O. 1970, c. 234, s. 101; 1980, c. 49, s. 9.

97. Subject to any express provision in the instrument that created the charge or in any other registered instrument relating thereto, the registered owner of a registered charge may enforce it by foreclosure or sale in the same manner and under the same circumstances in and under which he might enforce it if the land had been transferred to him by way of mortgage, subject to a proviso for redemption. R.S.O. 1970, c. 234, s. 102; 1980, c. 49, s. 10.

Foreclosure
by owner
of charge

98.—(1) Subject to the *Mortgages Act* the registered owner of a registered charge that contains a power of sale, upon production of evidence satisfactory to the land registrar, may sell and transfer the interest in the land or any part thereof that is the subject of the charge in accordance with the terms of the power in the same manner as if he were the registered owner of the land to the extent of such interest therein.

Remedy of
owner of
charge with
power of sale
R.S.O. 1980,
c. 296

(2) Upon the registration of a transfer under subsection (1) and upon satisfactory evidence being produced, the land registrar may delete from the register the entry of an instrument or writ appearing to rank subsequent to the charge under which the land is sold, and thereupon the interest of every person claiming under such subsequent instrument or writ ceases to affect the land. R.S.O. 1970, c. 234, s. 103; 1979, c. 93, s. 51.

Effect of
sale by
chargee

99. No person, other than the registered owner of a registered charge, is entitled to register a transfer of the charge, but, subject to the maintenance of the right of such owner, unregistered interests in a registered charge may be created in the same manner and with the same incidents, so far as the difference of the subject-matter admits, in and with which unregistered estates and interests may be created in registered land. R.S.O. 1970, c. 234, s. 104.

Dealings with
registered
charge

100.—(1) The registered owner of a registered charge may, in the prescribed manner, transfer the charge to another person as owner.

Transfer of
charges

(2) The transfer shall be completed by the land registrar entering on the register the transferee as owner of the charge transferred.

Transfer
completed
by entry on
register

(3) The transfer, when registered, confers upon the transferee the ownership of the charge free from any unregistered interests therein, and the transfer of part of the sum secured by a charge confers upon the transferee the ownership of such part free from any unregistered interests therein.

Effect of
registration
of transfer

As between
chorgor and
chargee

(4) Every transfer of a charge is subject to the state of account upon the charge between the chorgor and the chargee.

Transferor
deemed
owner until
registration

(5) The transferor shall be deemed to remain owner of the charge until registration of the transfer of charge has been completed in accordance with this Act.

Transfer of
part of a
charge

(6) The registered owner of a registered charge may transfer a part of the sum secured by the charge, and the part so transferred may be given priority over the remaining part, or may be deferred or may continue to rank equally with it as is stated in the transfer.

Transfer of
charge may
include provi-
sion to retransfer

(7) A charge of a charge shall not be registered, but a charge may be transferred subject to a provision to retransfer it to the transferor of the charge upon the payment of a sum of money either with or without interest, or upon the performance of any other condition, and, until the charge has been retransferred, the transferee of the charge shall for the purposes of this Act be deemed to be the absolute owner thereof. R.S.O. 1970, c. 234, s. 105; 1979, c. 93, s. 51.

Cessation
of en-
cumbrance

101.—(1) The land registrar shall, on the requisition of the registered owner of land and on due proof of the satisfaction of a charge thereon, or may, on the requisition of the registered owner of a registered charge or of his personal representative or on his certificate of the satisfaction thereof, note on the register in the prescribed manner the cessation of the charge, and thereupon the charge ceases.

Other en-
cumbrances

(2) The land registrar may in like manner and with the like effect note the cessation of any other encumbrance. R.S.O. 1970, c. 234, s. 106 (1, 2); 1979, c. 93, s. 51.

Partial
cessation
of charge

(3) On the requisition or certificate of the registered owner of a registered charge or of the personal representative of such owner authorizing or certifying the discharge of any part of the land therefrom, the land registrar may note on the register the discharge of such land from the charge, and thereupon the charge ceases as to the land discharged. 1979, c. 93, s. 30.

Death of
person
certifying to
cessation of
charge

(4) The death of the person who signed the requisition or certificate does not revoke or otherwise affect the discharge. R.S.O. 1970, c. 234, s. 106 (4).

Complete
or partial
discharge
of en-
cumbrance
existing
at first
registration

102.—(1) Whereupon the first registration of land notice of an encumbrance affecting the land has been entered on the register, the land registrar, on proof to his satisfaction of the discharge of the encumbrance, shall note in the prescribed manner on the register the cessation of the encumbrance and thereupon the encumbrance ceases.

(2) On the requisition or certificate of a mortgagee whose mortgage was entered on the register on the first registration of the land, or the registered assignee thereof, or of the personal representative of such mortgagee or assignee, authorizing or certifying the discharge of the whole or a part of the land therefrom, or the discharge of the whole or a part of the money thereby secured, the land registrar may note on the register the discharge of the land from the mortgage or the discharge of the part of the money, and thereupon the encumbrance ceases as to the land or money discharged.

Note of
discharge on
requisition of
mortgagee

(3) The death of the person who signed the requisition or certificate does not revoke or otherwise affect it. R.S.O. 1970, c. 234, s. 107; 1979, c. 93, s. 51.

Death of
person after
signing
requisition

103. Where it appears to the satisfaction of the land registrar that a lien under the *Mechanics' Lien Act* has ceased to exist, he may make an entry in the register cancelling the claim, and thereupon the claim ceases to affect the land. R.S.O. 1970, c. 234, s. 108; 1979, c. 93, s. 51.

Cancellation
of mechanic's
lien
R.S.O. 1980,
c. 261

LEASEHOLD INTERESTS

104.—(1) A registered owner of leasehold land may, in the prescribed manner, transfer the whole of his estate in the land or in a part thereof.

Transfer of
leasehold
land

(2) The transfer shall be completed by the land registrar entering on the register the transferee as owner of the leasehold land transferred and, until the registration of the transfer has been completed in accordance with this Act, the transferor shall be deemed to remain owner. R.S.O. 1970, c. 234, s. 109; 1979, c. 93, s. 51.

Transferor
deemed
owner until
registration

105. A transfer for valuable consideration of leasehold land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held, when registered, vests in the transferee the land transferred for all the leasehold estate described in the registered lease relating to such land and then unexpired, with all implied or expressed rights, privileges and appurtenances, free from all estates and interests whatsoever, including any estates and interests of Her Majesty, that are within the legislative jurisdiction of Ontario, but subject to the following:

Estate of
transferee
for valuable
consideration
of leasehold
land with a
declaration
of absolute
title of lessor

1. All implied and express covenants, obligations and liabilities incident to such estate.
2. The encumbrances, if any, entered or noted on the register.

3. The liabilities, rights and interests that affect the leasehold estate and that are by this Act declared not to be encumbrances in the case of registered freehold land unless the contrary is expressed on the register. R.S.O. 1970, c. 234, s. 110.

Estate of transferee for valuable consideration of leasehold land without a declaration of title of lessor

106. A transfer for valuable consideration of leasehold land, registered without a declaration of the title of the lessor, does not affect the enforcement of any estate, right or interest affecting or in derogation of the title of the lessor to grant the lease under which the land is held, but otherwise, when registered, has the same effect as a transfer for valuable consideration of the same land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held. R.S.O. 1970, c. 234, s. 111.

Estate of transferee for valuable consideration of leasehold land with a declaration of qualified title of lessor

107. A transfer for valuable consideration of leasehold land, registered with a declaration that the lessor had a qualified title to grant the lease under which the land is held, when registered, has the same effect as a transfer for valuable consideration of the same land registered with a declaration that the lessor had an absolute title to grant the lease under which the land is held, except that such transfer does not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted from the effect of registration. R.S.O. 1970, c. 234, s. 112.

Estate of voluntary transferee of leasehold land

108. A transfer of registered leasehold land made without valuable consideration is subject, so far as the transferee is concerned, to any unregistered estates, rights, interests or equities subject to which the transferor held the same, but otherwise, when registered, in all respects and in particular as respects registered dealings on the part of the transferee, has the same effect as a transfer of the same land for valuable consideration. R.S.O. 1970, c. 234, s. 113.

Implied covenants on transfer of leasehold estates

109. On the transfer of registered leasehold land, subject to any express provision in the transfer or in any other registered instrument relating thereto, there shall be implied,

- (a) on the part of the transferor a covenant with the transferee that, notwithstanding anything by such transferor done, omitted or knowingly suffered, the rents, covenants and conditions reserved and contained by and in the registered lease, and on the part of the lessee to be paid, performed and observed, have been so paid, performed and observed up to the date of the transfer; and
- (b) on the part of the transferee a covenant with the transferor that the transferee, his executors, administrators or assigns will pay, perform and observe the rents, coven-

ants and conditions by and in the registered lease reserved and contained, and on the part of the lessee to be paid, performed and observed, and will keep the transferor, his executors, administrators and assigns indemnified against all actions, suits, expenses and claims on account of the non-payment of the rent or a part thereof, or the breach of the covenants or conditions or any of them. R.S.O. 1970, c. 234, s. 114; 1980, c. 49, s. 11.

110.—(1) A lessee or other person entitled to or interested in a lease or agreement for a lease of registered land may apply to the land registrar to register notice of the lease or agreement in the prescribed manner. Lessee may apply for registration of notice of lease

(2) Where the lease is by the registered owner of the land, the land registrar may without notice to him enter on the register such notice thereof as he considers necessary. Lease by registered owner

(3) Where the lease or agreement for a lease is not by the registered owner but his title appears to be subject thereto, the land registrar, with the concurrence of the owner, may enter notice of the lease or agreement on the register. R.S.O. 1970, c. 234, s. 115 (1-3); 1979, c. 93, s. 51. Lease not by registered owner

(4) The applicant shall deliver to the land registrar the original lease or agreement or an executed copy thereof and, if the application is granted, the land registrar shall make a note on the register identifying the lease or agreement, and the lease or agreement or copy so deposited shall be deemed to be the instrument of which notice is given. R.S.O. 1970, c. 234, s. 115 (4); 1979, c. 93, ss. 31 (1), 51. Lease or executed copy to be deposited

(5) Where notice of a lease or agreement for a lease is registered, every registered owner of the land and every person deriving title through him, excepting owners of encumbrances registered prior to the registration of such notice, shall be deemed to be affected with notice of the lease or agreement as being an encumbrance on the land in respect of which the notice is entered. R.S.O. 1970, c. 234, s. 115 (6). Effect of registration

(6) Where notice of a lease or agreement for a lease has been registered, a notice of, Notice of interest in lease

(a) a sublease;

(b) an assignment of the lease;

(c) a charge of the lease;

(d) an assignment of the lessor's interest in the lease; or

(e) a determination of the lease,

may be registered. R.S.O. 1970, c. 234, s. 115 (7); 1979, c. 93, s. 31 (2).

Priorities
under leases

(7) Subject to paragraph 4 of subsection 47 (1) and except where the person claiming an interest under a lease or agreement for a lease of which interest a notice has been registered has actual notice of another interest under the lease or agreement for a lease or under another lease or agreement for a lease, the first-mentioned interest under the lease or under the agreement for a lease takes priority over one of which a notice has not been registered. R.S.O. 1970, c. 234, s. 115 (8).

Determina-
tion of lease
existing
at first
registration

111. The land registrar, on proof to his satisfaction of the determination of a lease of registered land existing at first registration, shall note on the register the determination of the lease. R.S.O. 1970, c. 234, s. 116; 1979, c. 93, s. 51.

CERTIFICATES

Certificates,
etc., to be
evidence

112. A certificate of ownership or a certificate of charge is *prima facie* evidence of the matters therein contained, and an office copy of a registered lease is *prima facie* evidence of the contents of the registered lease. R.S.O. 1970, c. 234, s. 122.

Effect of
deposit of
certificate or
office copy
of lease

113. Subject to any registered estates, charges or rights, the deposit of a certificate of ownership or of an office copy of a registered lease for the purpose of creating a lien on the land to which the certificate or lease relates shall be deemed equivalent to a deposit of the title deeds of the land. R.S.O. 1970, c. 234, s. 123.

Production
of certificate
of ownership

114. Where upon an application for the registration of a charge or of a transfer of land or of a transfer of a charge the land registrar considers it expedient to require the production of the certificate of ownership, if any is outstanding, either for the purpose of identifying the person dealing with the land or charge or for cancellation or for any other purpose, he may do so, and may decline to register the instrument until the certificate has been produced and, if the certificate is not produced within such time as the land registrar limits, he may return the instrument. R.S.O. 1970, c. 234, s. 124; 1979, c. 93, s. 51.

Right to
compel
production
of certificate
of ownership

115.—(1) A person who is entitled to have a transfer or charge entered on the register may require the holder of the certificate of ownership, if any is outstanding, to produce the certificate to the land registrar, or to deliver it to the person so entitled for production for the purpose of having all proper entries or alterations made thereon by the land registrar or for cancellation.

(2) A person entitled to have a cessation of a charge registered may require the production of an outstanding certificate of the charge in like manner for cancellation. R.S.O. 1970, c. 234, s. 125; 1979, c. 93, s. 51. Certificate of ownership of a charge which has ceased

116.—(1) The land registrar may issue to any person entitled to inspect the register of title a certificate of search in the prescribed form or in such form as may be authorized by the Director of Titles. Certificate of search

(2) A certificate of search is *prima facie* evidence of the matters therein contained. R.S.O. 1970, c. 234, s. 127; 1979, c. 93, s. 51. Idem

RESTRICTIONS, ETC.

117.—(1) Where the registered owner of freehold or leasehold land or of a charge desires to impose restrictions on transferring or charging the land or charge, he may apply to the land registrar to make an entry on the register that no transfer shall be made or charge created unless the following things, or such of them as the owner determines, are done: Power to place restrictions on register

1. Notice of an application for a transfer or for the creation of a charge is transmitted by registered mail to such address as he specifies to the land registrar.
2. The consent of some person or persons, to be named by him, is given to the transfer or the creation of a charge.
3. Some other matter or thing is done as is required by him and approved by the land registrar.

(2) If the land registrar is satisfied of the right of the applicant to impose such restrictions, he shall make a note of them on the register and no transfer shall be made or charge created except in conformity therewith. Land registrar to enter restrictions in register

(3) The land registrar is not required to enter a note of a restriction, except upon such terms as to payment of the fees and otherwise as are prescribed, or to enter a note of a restriction that he considers unreasonable or calculated to cause inconvenience. Discretion of the land registrar

(4) Any such restriction may at any time be withdrawn or modified at the instance of all the persons for the time being appearing by the register to be interested in the restriction, and is also subject to be set aside by the court. R.S.O. 1970, c. 234, s. 128; 1979, c. 93, s. 51. Restrictions may be withdrawn or set aside

Registration
of conditions
and restric-
tions, on
application

118.—(1) Upon the application of the owner of land that is being registered or of the registered owner of land, the land registrar may register as annexed to the land a condition or restriction that the land or a specified part thereof is not to be built upon, or is to be or is not to be used in a particular manner, or any other condition or restriction running with or capable of being legally annexed to land.

Registration
of conditions,
restrictions
and
covenants,
on transfer

(2) The land registrar may register as annexed to the land a condition, restriction or covenant that is included in a transfer of registered land that the land or a specified part thereof is not to be built upon, or is to be or is not to be used in a particular manner, or any other condition, restriction or covenant running with or capable of being legally annexed to land.

Registration
of covenants,
on applica-
tion

(3) Upon the application of the owner of land that is being registered or of the registered owner of land, the land registrar may register as annexed to the land a covenant that the land or a specified part thereof is not to be built upon, or is to be or is not to be used in a particular manner, or any other covenant running with or capable of being legally annexed to land.

Idem

(4) A covenant shall not be registered under subsection (3) unless,

- (a) the covenantor is the owner of the land to be burdened by the covenant;
- (b) the covenantee is a person other than the covenantor;
- (c) the covenantee owns land to be benefitted by the covenant and that land is mentioned in the covenant; and
- (d) the covenantor signs the application to assume the burden of the covenant.

Notice and
modification
or discharge
of covenants

(5) The first owner and every transferee, and every other person deriving title from him, shall be deemed to be affected with notice of such condition or covenant, but any such condition or covenant may be modified or discharged by order of the court on proof to the satisfaction of the court that the modification will be beneficial to the persons principally interested in the enforcement of the condition or covenant.

Covenants
or conditions
running
with land

(6) The entry on the register of a condition or covenant as running with or annexed to land does not make it run with the land, if such covenant or condition on account of its nature, or of the manner in which it is expressed, would not otherwise be annexed to or run with the land.

(7) Where a condition or covenant has been entered on the register as annexed to or running with land and a similar condition is contained in a subsequent transfer or a similar covenant is in express terms entered into with the owner of the land by a subsequent transferee, or *vice versa*, it is not necessary to repeat the condition or covenant on the register or to refer thereto, but the land registrar may, upon a special application, enter the condition or covenant either in addition to or in lieu of the condition or covenant first mentioned.

Subsequent transfers

(8) Where a condition or covenant has been entered on the register as annexed to or running with land for a fixed period and the period has expired, the land registrar may, at any time after ten years from the expiration of the period, remove the entry from the register. R.S.O. 1970, c. 234, s. 129 (1-8); 1979, c. 93, s. 51.

Removal of entry of condition or covenant from register

(9) Where a condition, restriction or covenant has been registered as annexed to or running with the land and no period or date was fixed for its expiry, the condition, restriction or covenant is deemed to have expired forty years after the condition, restriction or covenant was registered, and may be deleted from the register by the land registrar. 1979, c. 93, s. 34.

Condition, etc., expires after 40 years

(10) Where a condition or restriction has been registered as annexed to land, the condition or restriction is as binding upon any person who becomes the registered owner of the land or a part thereof as if the condition or restriction had been in the form of a covenant entered into by the person who was the registered owner of the land at the time of the registration of the condition or restriction. R.S.O. 1970, c. 234, s. 129 (10).

Effect of conditions and restrictions

DOWER AND CURTESY

119.—(1) Where a person claims that registered land is free from dower and no instrument can be produced and registered showing release of dower by the widow of the registered owner, the land registrar may, upon satisfactory evidence produced before him, give notice to the widow to support her claim to dower in the registered land within thirty days.

Claim that land is free from dower

(2) If the widow of the registered owner fails to claim her dower within the thirty days, the land registrar may enter on the register a note that the land is free from dower, and this entry is a bar to any claim for dower by the widow.

Widow barred after failure to claim dower

(3) If the widow of the registered owner claims her right to dower within the thirty days, the land registrar may hear and determine her claim. R.S.O. 1970, c. 234, s. 131 (1-3); 1979, c. 93, s. 51.

Dower claim decided by land registrar

Registration of notices of estates in dower or by the curtesy

120. A person entitled to an estate in dower or by the curtesy in registered land may apply in the prescribed manner to the land registrar to register notice of such estate, and the land registrar, if satisfied of the title of such person to such estate, shall register notice of the same accordingly in the prescribed form, and, when so registered, such estate is an encumbrance appearing on the register and shall be dealt with accordingly. R.S.O. 1970, c. 234, s. 133; 1979, c. 93, s. 51.

DEATH OF REGISTERED OWNER

Transmission on death of owner of freehold land

121. On the death of the sole registered owner or of the survivor of several joint registered owners of freehold land, such person shall be registered as owner in the place of the deceased owner or owners as may, on the application of any person interested in the land, be appointed by the land registrar, regard being had to the rights of the several persons interested in the land and in particular to the selection of any such person as for the time being appears to the land registrar to be entitled according to law to be so appointed, subject to an appeal to the Divisional Court in the prescribed manner by any person aggrieved by an order of the land registrar under this section. R.S.O. 1970, c. 234, s. 134; 1979, c. 93, s. 51.

Transmission on death of owner of leasehold land or of charge

122. On the death of the sole registered owner or of the survivor of several joint registered owners of leasehold land or of a charge, the executor or administrator of such sole deceased owner or of the survivor of such joint owners is entitled to be registered as owner in his place. R.S.O. 1970, c. 234, s. 135.

Entry of representatives of deceased tenant in common

123. Where two or more persons holding as tenants in common have been entered as owners of land or a charge and one of them dies, his personal representative, or such other person as is entitled to the share of the deceased, may be entered as owner with the survivor or survivors. R.S.O. 1970, c. 234, s. 136.

Removal of name of deceased joint tenant

124. Where one of two or more persons who are registered as the owners of land as joint tenants or as the owners of a charge on a joint account with right of survivorship has died and it appears from the parcel register that the interest of the deceased owner has passed by right of survivorship to the surviving owner or owners, the land registrar may, upon receipt of an application in the prescribed form, delete the name of the deceased owner from the parcel register. 1980, c. 49, s. 12.

Evidence of transmission of registered ownership

125. The fact of a person having become entitled to land or a charge in consequence of the death of a registered owner shall be proved in the prescribed manner. R.S.O. 1970, c. 234, s. 138.

126. Where land has been transferred to a person beneficially entitled thereto within three years after the death of the registered owner or has become vested in the person beneficially entitled thereto under the *Estates Administration Act*, the land registrar, upon application and the production of satisfactory evidence showing that all debts of the deceased registered owner have been paid and that creditors have been notified, may,

Entry of name of person beneficially entitled as owner without reference to debts
R.S.O. 1980, c. 143

(a) where the person beneficially entitled is shown on the register as owner of the land and the register shows that the land is subject to the unpaid debts of the deceased registered owner, delete the reference to the unpaid debts from the register; or

(b) register the person beneficially entitled to the land without reference to the unpaid debts of the deceased registered owner. R.S.O. 1970, c. 234, s. 139; 1979, c. 93, s. 51.

127.—(1) Notwithstanding anything in the *Estates Administration Act* or this Act, no executor, administrator, devisee, beneficiary, heir, nor any person interested in freehold or leasehold land or in a charge or interest therein, shall, by reason of the death of a registered owner, co-owner or joint owner of the land, charge or interest, be entered as owner unless the consent in writing of the Minister of Revenue is attached to or endorsed on the application for transmission of interest or application for entry and such entry shall be in respect of only the land, charge or interest mentioned in the application. R.S.O. 1970, c. 234, s. 140 (1); 1977, c. 8, s. 8 (1).

Transfer of interest of deceased owner not to be entered without consent of Minister of Revenue

(2) Notwithstanding subsection (1), the consent of the Minister of Revenue is not required to be attached to or endorsed on the application for transmission of interest or application for entry in respect of any land, charge or interest that is prescribed by the Minister of Revenue by regulations made under *The Succession Duty Act*, being chapter 449 of the Revised Statutes of Ontario, 1970, to be land or a charge or interest that may be conveyed, transferred or assigned without the consent of the Minister of Revenue. 1977, c. 8, s. 8 (2).

Where consent of Minister not required

(3) Subsections (1) and (2) do not apply where the death of the registered owner occurred prior to the 1st day of January, 1970 or after the 10th day of April, 1979. 1979, c. 93, s. 35.

Saving

128.—(1) A person claiming to be entitled to freehold or leasehold land, or to an interest therein capable of being registered

Application of devisees, etc., for registration

tered, or to a charge as devisee, heir, executor or administrator of a person who might have been registered under section 69, or a person claiming through or under such devisee, heir, executor or administrator, may apply to be registered as owner of such land, interest or charge, and, if no conflicting registration has been made, may be so registered subject to section 69 and this section.

Mode of
entry

(2) On registering the applicant, the land registrar shall, so far as practicable, enter on the register short particulars of every instrument or other title under which the right is conferred, as if such instrument had been duly presented for registration, or application for entry of transmission had been made in the proper order of time, and, as a preliminary step to the registration of the applicant, may enter an intermediate transferee, heir, executor or administrator as registered owner where that method is more convenient.

All persons
entitled must
apply

(3) No application by a person claiming through or under a deceased person shall be allowed unless all the persons entitled to the whole of the estate of the deceased in the land are to be entered as owners. R.S.O. 1970, c. 234, s. 142; 1979, c. 93, s. 51.

CAUTION, ETC.

Registration
of caution

129.—(1) A person claiming to have an interest in registered land or in a registered charge of which he is not the registered owner may apply to the land registrar for the registration of a caution to the effect that no dealing with the land or charge be had on the part of the registered owner or other person named in the caution without the consent of the cautioner. R.S.O. 1970, c. 234, s. 143 (1); 1979, c. 93, ss. 36 (1), 51.

Caution
by
registered
owner

(2) Where the registered owner of freehold or leasehold land or of a charge has executed a transfer or a charge of the land or a transfer of the charge but claims that on account of special circumstances shown by affidavit the transferee or chargee should not be registered without the consent of the registered owner, the land registrar may permit the registration of a caution by the registered owner. 1979, c. 93, s. 36 (2).

When no
caution

(3) A person interested under a lease or agreement for a lease of which notice has been entered on the register, or a person entitled to an estate in dower or by the curtesy of which notice has been entered on the register, is not entitled to register a caution in respect of the lease or agreement or estate in dower or by the curtesy.

Renewal and
expiration

(4) A caution registered under this section ceases to have effect five years from the date of its registration unless renewed within that time. R.S.O. 1970, c. 234, s. 143 (2, 3).

(5) When a caution ceases to have effect, the land registrar may delete the entry from the register. R.S.O. 1970, c. 234, s. 143 (6); 1979, c. 93, s. 51. Deletion from register

130.—(1) After a caution has been registered, the land registrar shall not, without the consent of the cautioner, register any dealing with the land or charge against which the caution is registered. R.S.O. 1970, c. 234, s. 144 (1); 1979, c. 93, s. 51. Caution prevents dealing

(2) The registered owner, or any other person having an interest in land or a charge against which a caution has been registered, may apply to the land registrar at any time for a notice to be served upon the cautioner warning him that his caution may cease to have effect unless the cautioner appears before the land registrar at the time and place mentioned in the notice and satisfies him that the caution should not be deleted from the register. 1979, c. 93, s. 37 (1). Owner may apply for removal of caution

(3) Upon receipt by him of an application under subsection (2), the land registrar shall serve a notice in the prescribed form upon the cautioner. R.S.O. 1970, c. 234, s. 144 (3); 1979, c. 93, s. 51. Service of notice

(4) If the cautioner fails to satisfy the land registrar that the caution should continue, the land registrar may order that the entry of the caution be deleted from the register, and, unless the order is appealed, the land registrar shall delete the entry of the caution from the register and thereupon the caution ceases. 1979, c. 93, s. 37 (2), *part*. Where cautioner fails to satisfy land registrar

(5) The consent of a cautioner is not required where the dealing proposed to be registered is under the authority of a judgment or order of the court in a suit or proceeding to which the cautioner is a party or where such dealing is under a power of sale contained in a charge or mortgage that is prior to the title under which the cautioner claims and the cautioner has been served with a notice of the proposed exercise of the power of sale and the caution is not in respect of the exercise of the power of sale or where the dealing is of such a nature that it cannot detrimentally affect the interest of the cautioner as claimed in the affidavit filed with his caution or where the transferee, chargee or other person desiring the registration of the dealing is willing that the same should be registered subject to the continuance of the caution and the land registrar thinks fit so to register it, and, where a caution is continued, such continuance prevents further registrations of dealings by the registered owner until the consent of the cautioner is obtained, unless as in this section provided. R.S.O. 1970, c. 234, s. 144 (6); 1979, c. 93, ss. 37 (3), 51. When consent of cautioner not required

(6) Where a caution affects part only of the land dealt with by the transfer, charge or other instrument, the land registrar may, Dealing where caution against part of land

upon the application in writing of the person desiring registration or his solicitor, register the instrument as to the land not affected by the caution, and may subsequently, with the consent of the cautioner, register the dealing as to the remainder of the land dealt with by the instrument or any part thereof. 1979, c. 93, s. 37 (4).

Withdrawal
of caution

(7) A land registrar, upon receiving a withdrawal of caution in the prescribed form, may delete the caution referred to in the withdrawal from the register. 1979, c. 93, s. 37 (5).

Second
caution

131. A second caution by the same cautioner or by any other person in respect of the same matter shall not be registered or have any effect except with the permission of the land registrar, which may be given either upon terms or without terms as he considers proper. R.S.O. 1970, c. 234, s. 147; 1979, c. 93, s. 51.

Caution to
be supported
by affidavit

132. Every caution shall be supported by an affidavit in the prescribed form, stating the nature of the interest of the cautioner, the land to be affected by the caution and such other matters as are prescribed. R.S.O. 1970, c. 234, s. 148.

Liability
where
caution
improperly
registered

133. A person who registers a caution without reasonable cause is liable to make to any person who may sustain damage by its registration such compensation as is just, and the compensation shall be deemed to be a debt due from the person who has registered the caution to the person who has sustained damage. R.S.O. 1970, c. 234, s. 149.

Limit of
effect of
caution

134. A caution does not prejudice the claim or title of any person and has no effect except as in this Act provided. R.S.O. 1970, c. 234, s. 150.

Caution
based upon
lis pendens

135—(1) A certificate of *lis pendens* affecting land shall not be registered, but any party to an action, his solicitor or any person claiming to be interested in the action may register a caution subject to the same conditions as in other cases.

Agreement
of purchase
may be
protected by
caution

(2) An agreement of purchase and sale or an assignment thereof shall not be registered, but a person claiming an interest in registered land under such an agreement may register a caution subject to the same conditions as in other cases. R.S.O. 1970, c. 234, s. 151.

Sale of
standing
timber

136.—(1) Where timber standing upon registered land is sold under an agreement in writing, the purchaser, instead of registering a caution, may deposit the agreement with the land registrar, and the land registrar, upon proof of the due execution thereof by the owner, shall register it as an encumbrance on the land by

entering a note on the register referring to the instrument and giving shortly its effect.

(2) When registering the agreement, the purchaser shall by memorandum endorsed thereon or annexed thereto give his address for service.

Address for
service

(3) The registration of such an agreement may be vacated upon the consent in writing of the purchaser verified by an affidavit of execution.

Discharge
by consent

(4) The registration of such an agreement may also be vacated if the purchaser fails, for the period of one month from the date of the mailing of the notice provided for in subsection (5), to satisfy the land registrar that he still has rights under the agreement.

Discharge
by land
registrar

(5) Upon proof to his satisfaction that the rights of the purchaser are at an end, the land registrar shall send a notice by registered mail addressed to the purchaser at his address for service, warning him that his agreement will cease to have effect after the expiration of one month from the mailing of the notice unless good cause for its continuance is shown.

Notice

(6) At any time after ten years from the expiry date of an agreement or renewal thereof of which notice has been registered under this section, the land registrar may, upon application and without notice to the purchaser, delete from the register the entry of the notice of agreement or of the renewal. R.S.O. 1970, c. 234, s. 152; 1979, c. 93, s. 51.

Removal of
entry of
timber
agreement
from register
ten years
after expiry

EXECUTIONS

137.—(1) A sheriff to whom a writ of execution or renewal thereof is directed shall, upon receiving from or on behalf of the judgment creditor, the prescribed fee and instructions to so do, forthwith deliver to the land registrar of each land titles division wholly or partially within the sheriff's territorial jurisdiction a copy of the writ or renewal, and no registered land is bound by any writ of execution until a copy delivered by the sheriff has been received and recorded by the land registrar. 1980, c. 49, s. 14 (1).

Notice of
executions

(2) The land registrar shall keep an index or a book in the prescribed form in which shall be entered a record of all writs and renewals, copies of which are received by him from the sheriff or other officer.

Record of
same

Transfer
before entry
void as
against
purchaser

(3) No sale or transfer under any such writ is valid as against a person purchasing for valuable consideration before such entry is made, notwithstanding that the purchaser may have had notice of the writ.

Entry of
satisfaction
of writ

(4) Upon production to the land registrar of sufficient evidence of the satisfaction of such a writ, he shall cause an entry to be made in the index or book to that effect, and, on such entry, the writ shall be deemed to be satisfied.

When writ
to be
presumed
to be spent

(5) Every writ and renewal of a writ shall be presumed to have been spent and the delivery or transmission of a copy thereof ceases to have effect at the expiration of the writ or renewal as appearing on the copy transmitted, but, if there has been a sufficient commencement of the execution to enable it to be completed by the sale and conveyance of the land under the writ and the writ has not been completely executed, the sheriff or officer shall, or the execution creditor may, at any time within one month before the expiration of the writ or renewal as so appearing, file with the land registrar a certificate of the sheriff or officer stating that fact, and such certificate shall be noted at the entry of the writ in the index or book, and the writ continues in force for a further period of one year from the filing of the certificate when it ceases to have effect unless another similar certificate is filed that operates in like manner.

Notice
where writ
against
owner under
different
name from
that on the
register

(6) Where an execution or other writ is issued against the registered owner under a different name from that under which he is registered, the writ has no effect under this Act unless the person who sues out the writ, or his solicitor, gives a notice to the land registrar stating the name under which the execution debtor is registered and otherwise in the form or to the effect prescribed or unless a like notice is written upon the copy of the writ.

Where writ
not binding

(7) Where land is being transferred or charged and where a notice under subsection (6) has not been given, a writ of execution or renewal thereof does not bind the land being transferred or charged as against the transferee or chargee if the land registrar decides that the name of the execution debtor appearing in the writ or renewal thereof and the name of the registered owner as it appears in the records of the land registry office do not represent the same person, and he issues a certificate accordingly. R.S.O. 1970, c. 234, s. 153 (2-7); 1979, c. 93, s. 51, *part*.

No fee under
R.S.O. 1980,
c. 146, s. 12

(8) No additional fee is payable to the sheriff or to the land registrar in respect of a certificate under section 12 of the *Execution Act*. R.S.O. 1970, c. 234, s. 153 (9); 1979, c. 93, s. 51, *part*; 1980, c. 49, s. 14 (3).

(9) Notwithstanding subsection 3 (2) of the *Bail Act* and subsection 18 (4) of the *Legal Aid Act*, copies of certificates of liens under either Act may be recorded in the same index or book in which writs are recorded under subsection (2) of this section. 1980, c. 49, s. 14 (3).

Liens for bail or legal aid
R.S.O. 1980, cc. 36, 234

138. Where a person applies for registration of an instrument and claims that a writ apparently affecting land does not affect the land or a charge thereon, he shall produce such evidence thereof as the land registrar considers necessary, and the land registrar may require all parties interested to be notified of the application and may himself decide the question or may direct an issue to be tried or a case to be stated and may make such order as to costs as he considers just. R.S.O. 1970, c. 234, s. 154; 1979, c. 93, s. 51.

Procedure when claimed writ not binding

139.—(1) The seizure under execution or other process of a mortgage or charge or of leasehold land registered under this Act does not take effect until a certificate of the sheriff or other officer that he has taken the mortgage, charge or leasehold land under such process against the registered owner thereof is lodged with the land registrar.

Seizure ineffectual until certificate by sheriff

(2) The certificate shall state the number of the parcel under which the land affected is registered and the name of the owner and shall be entered by the land registrar in the register.

Contents of certificate

(3) This section does not apply where the proceedings prescribed by section 21 of the *Execution Act* have been taken with respect to a mortgage or charge. R.S.O. 1970, c. 234, s. 155; 1979, c. 93, s. 51.

Application of section
R.S.O. 1980, c. 146

TRUSTEE ACT, APPLICABILITY

140. All the provisions of the *Trustee Act* that are not inconsistent with the provisions of this Act apply to land and charges registered under this Act, but this enactment does not prejudice the applicability to such land and charges of any provisions of that Act relating to land or choses in action. R.S.O. 1970, c. 234, s. 158.

How far R.S.O. 1980, c. 512, to apply

PART VIII

DESCRIPTIONS OF LAND AND REGISTERED PLANS

141.—(1) Registered land shall be described in such manner as the land registrar considers is best calculated to secure accuracy.

How land to be described

(2) The description of registered land is not conclusive as to the boundaries or extent of the land. R.S.O. 1970, c. 234, s. 159; 1979, c. 93, s. 51.

Description not conclusive

Alteration of
registered
description
of land

142. No alteration shall be made in the registered description of land, except under an order of the court or under subsection 60 (12), subsection 144 (7) or section 157 or 160 or by way of explanation, but this section does not extend to registered dealings with registered land in separate parcels, although the land was originally registered as one parcel. R.S.O. 1970, c. 234, s. 160; 1972, c. 132, s. 29.

Compulsory
registration
R.S.O. 1980,
c. 84

143.—(1) Except as provided by subsection (2), where land described in a description as defined in the *Condominium Act* or shown on a plan of subdivision is situate in a land titles division, the description along with the appropriate declaration or the plan of subdivision, as the case may be, shall be registered under this Act.

Exception
to subs. (1)
R.S.O. 1980,
c. 445

(2) A plan of subdivision may be registered under the *Registry Act* where,

- (a) the plan is presented and accepted for registration within six months after the operation of this Act was extended to the area in which the land is situate;
- (b) the registration under this Act of the land included in the plan would, in the opinion of the Director of Titles, result in an unreasonable delay in the registration of the plan; or
- (c) a regulation made under subsection (3) applies to the land shown on the plan.

Exception
by regulation

(3) The Lieutenant Governor in Council may make regulations designating such land titles divisions, or parts thereof, as are specified in the regulations as areas within which subsection (1) does not apply and such designation may be limited to a specified period or may expire on a specified date. 1979, c. 93, s. 40.

Plans to
conform to
regulations

144.—(1) Every plan submitted for registration or for deposit shall be prepared in accordance with the regulations. R.S.O. 1970, c. 234, s. 161 (1).

Subdivision
plans to be
registered

(2) Where land is being subdivided for the purpose of being sold or conveyed in lots, the person making the subdivision shall register in the proper land titles office a plan of the land prepared by an Ontario land surveyor. R.S.O. 1970, c. 234, s. 161 (2); 1979, c. 93, s. 41 (1).

Signature to
be affixed to
plan

(3) The person by whom or on whose behalf a plan is registered shall sign the plan. R.S.O. 1970, c. 234, s. 161 (3); 1979, c. 93, s. 41 (2).

(4) The land registrar, before accepting a plan for registration, may require evidence to be given him explaining any seeming discrepancy between the measurements on the plan and the description of the land in the register, or he may require evidence to be given him respecting any other matter of which he requires explanation. Additional information

(5) Before a plan, other than a plan of public lands prepared under the *Public Lands Act* or as otherwise excluded by the regulations, is registered or deposited in a land registry office for a land titles division the Director of Titles may require a survey thereof to be verified on the ground by the examiner of surveys or by such other person as is designated by the Director of Titles. Verification of survey
R.S.O. 1980,
c. 413

(6) The Director of Titles may direct that a true copy of a plan or a part of a plan registered or deposited in a land registry office for a land titles division be made under the direction of the examiner of surveys, who shall certify thereon that it is a true copy of the plan or of a part of a plan, as the case may be, and the copy so made and certified has all the force and effect of the plan or of that part of the plan of which it is a copy. R.S.O. 1970, c. 234, s. 161 (7-9); 1979, c. 93, s. 51, *part*. True copy of plan

(7) An error, defect or omission in a registered or deposited plan may be corrected in accordance with the regulations. 1980, c. 49, s. 15. Correction of plan

145. Section 82 of the *Registry Act* applies with necessary modifications to land registered under this Act. R.S.O. 1970, c. 234, s. 163. Application of
R.S.O. 1980,
c. 445, s. 82

146.—(1) Where land has been or is granted by the Crown under the *Public Lands Act* and a plan of subdivision of the land has not been registered, an application on behalf of the Minister of Natural Resources may be made to the land registrar to register a composite plan showing the land, and the boundaries of the lots or blocks shown thereon shall be deemed to be the true boundaries of the lots or blocks. R.S.O. 1970, c. 234, s. 164 (1); 1972, c. 4, s. 12; 1979, c. 93, s. 51. Composite plan

(2) Every composite plan shall conform as nearly as may be to a plan of subdivision under section 144 except that it shall be signed by the Surveyor General or his deputy on behalf of all persons having an interest in the land shown thereon. R.S.O. 1970, c. 234, s. 164 (2). Idem

(3) A subsequent severance from land shown on a plan registered under subsection (1) may be delineated by an Ontario land surveyor upon a duplicate of the plan so registered. 1979, c. 93, s. 43. Subsequent severance

Index Plan

147. A land registrar may prepare an Index Plan to illustrate and redesignate separately described parcels of land and the Index Plan may be registered with the approval of the Director of Titles and the parcels shall thereafter be described in accordance with the Index Plan. R.S.O. 1970, c. 234, s. 165; 1979, c. 93, s. 51.

Survey of township subsequent to grant from Crown

148.—(1) Where land in an unsurveyed township in a provisional judicial district has been or is granted by the Crown and the land is subsequently surveyed and laid out into lots and concessions in whole or in part, the survey shall be made in accordance with the provisions of the *Surveys Act* as made applicable by the terms of the patent or order in council granting the land, and the plan of survey shall be registered in the proper land registry office.

R.S.O. 1980,
c. 493

Requirements as to plan

(2) Such plan shall be prepared as nearly as may be in accordance with section 144. R.S.O. 1970, c. 234, s. 166.

Reference plan required in certain cases

149.—(1) A transfer or charge of freehold or leasehold land shall not be registered unless a plan of the land prepared by an Ontario land surveyor, to be known as a reference plan, has been deposited for record in the land registry office. 1979, c. 93, s. 44, *part*.

Saving

- (2) Subsection (1) does not apply to a transfer or charge,
- (a) of the whole of a registered parcel of land according to the parcel register;
 - (b) of the whole of a lot, block, street, lane, reserve or common according to a registered plan of subdivision or composite plan; or
 - (c) of the whole of a part according to a previously recorded reference plan of survey.

Idem

(3) The land registrar, having regard to the circumstances, may order that subsection (1) does not apply in the case of a transfer or charge mentioned in the order. R.S.O. 1970, c. 234, s. 167 (2, 3); 1979, c. 93, s. 51.

Boundaries

(4) New boundaries that are created by a severance shown on a reference plan and referred to or incorporated by reference in a registered instrument signed by the registered owner of the land shall be deemed to be true and unalterable boundaries and to be defined by the monuments shown thereon, but such monuments do not change or alter the position of any previously established boundary or prejudice prior registered rights or interests. R.S.O. 1970, c. 234, s. 167 (5).

Plan of street, road, lane, or common

150.—(1) Where a plan of subdivision lays out a part of the land as a street, road, lane or common, it shall not be registered

except on the application of the owner of the land subdivided with the consent in writing of all persons who are registered as mortgagees or chargees thereof. R.S.O. 1970, c. 234, s. 168.

(2) The consent of a chargee to a plan of subdivision, when registered, discharges from the charge any land dedicated by the owner as a public highway and any land designated as a reserve that is transferred to the corporation of the municipality in which the land is situate. 1972, c. 132, s. 31.

Effect of chargee's consent

(3) Land dedicated by its owner for a street or public highway is not subject to any claim under Part III of the *Family Law Reform Act* by the spouse of the person by whom it was dedicated. 1980, c. 49, s. 16.

Claim under R.S.O. 1980, c. 152

151.—(1) Where a street, road or lane laid out on a plan registered in a land registry office has become a public highway and has thereby become vested in a municipal corporation, the municipal corporation may apply to the land registrar to be entered as the owner thereof.

Entry on register of municipal corporation as owner of streets laid out on plan

(2) Where a highway or part of it has been closed by the action of a municipal council and the highway or part of it has been transferred by the municipal corporation without the municipal corporation having been entered as owner of it, the transferee may apply to be entered as owner of the highway or part of it transferred to him and, upon due proof of the facts, the land registrar may enter such transferee as owner. R.S.O. 1970, c. 234, s. 169; 1979, c. 93, s. 51.

Entry as owner of transferee from a municipal corporation of closed-up highway

152.—(1) No plan of survey or subdivision to which the *Planning Act* applies shall be registered unless approved under that Act. R.S.O. 1970, c. 234, s. 171(1).

Where R.S.O. 1980, c. 379 applies

(2) Composite plans registered under section 146 are not subject to the provisions of the *Planning Act* with respect to approval thereof. R.S.O. 1970, c. 234, s. 171 (2); 1972, c. 132, s. 32.

Where R.S.O. 1980, c. 379 does not apply

153. A registered plan shall not be amended except under subsection 144(7) or under section 145. 1972, c. 132, s. 33, *part*.

Amendment of plan

PART IX

FRAUD

154. Subject to the provisions of this Act, with respect to registered dispositions for valuable consideration, any disposition of land or of a charge on land that, if unregistered, would be fraudulent and void is, notwithstanding registration, fraudulent and void in like manner. R.S.O. 1970, c. 234, s. 174.

Fraudulent dispositions

Certain
fraudulent
acts declared
to be
offences

155. Every person who fraudulently procures, attempts to fraudulently procure or is privy to the fraudulent procurement of an entry on the register or of an erasure from the register or alteration of the register is guilty of an offence under this Act and on conviction is liable to imprisonment for a term of not more than two years, with or without hard labour, or to be fined such sum not exceeding \$1,000 as the court before which he is tried adjudges, and the entry, erasure or alteration is void as between all parties or privies to the fraud. R.S.O. 1970, c. 234, s. 175.

Cancellation
of fraudulent
entries

156.—(1) Upon the conviction under this Act or under the criminal law of Canada of a person for an offence whereby he fraudulently procured an entry on the register by reason of which any person other than the rightful owner has become the registered owner of land, or by reason of which land under this Act has been wrongfully encumbered, the land registrar, on the application of the rightful owner, may cancel the wrongful entry and may enter the rightful owner as the registered owner of the land.

Where land
has been
transferred
to innocent
holder

(2) If while the wrongful entry was subsisting on the register an innocent person has been registered as the owner of a charge upon or an estate, right or interest in the land, the land registrar, instead of cancelling the wrongful entry, may make an entry on the register stating the fact of the conviction and revesting the land in the rightful owner subject to the charge, estate, right or interest, and the land thereupon vests in the person named in the last-mentioned entry in accordance with its terms.

Application
of section

(3) This section applies to past as well as future cases. R.S.O. 1970, c. 234, s. 176; 1979, c. 93, s. 51.

PART X

RECTIFICATION OF THE REGISTER

Entry of
caution by
land registrar
in case of error

157.—(1) The land registrar may of his own accord and without affidavit enter a caution to prevent the dealing with registered land if it appears to him that an error has been made in an entry by misdescription of the land or otherwise.

Correction
of errors

(2) Subject to the regulations, the land registrar, before the receipt of any conflicting instruments or after notifying all persons interested, upon such evidence as appears to him sufficient, may correct errors and supply omissions in certificates of ownership or of charge, or in the register, or in an entry therein, and may call in any outstanding certificate for that purpose. R.S.O. 1970, c. 234, s. 177 (1, 2); 1979, c. 93, s. 51.

(3) Where the land registrar restores to the register any covenant or condition, he may do so with such modifications as he considers advisable so as to do the least possible injury to any person affected by its omission or restoration, and, upon notice to the Minister, at the same time or subsequently, may determine what damages, if any, shall be paid to any person claiming to have been injuriously affected by the omission or restoration of the covenant or condition. R.S.O. 1970, c. 234, s. 177 (3); 1972, c. 1, s. 43 (2); 1979, c. 93, s. 51.

Restoration of covenants or conditions and compensation therefor

158. Subject to any estates or rights acquired by registration under this Act, where a court of competent jurisdiction has decided that a person is entitled to an estate, right or interest in or to registered land or a charge and as a consequence of the decision the court is of opinion that a rectification of the register is required, the court may make an order directing the register to be rectified in such manner as is considered just. R.S.O. 1970, c. 234, s. 178.

Court may order rectification

159. Subject to any estates or rights acquired by registration under this Act, if a person is aggrieved by an entry made, or by the omission of an entry from the register, or if default is made or unnecessary delay takes place in making an entry in the register, the person aggrieved by the entry, omission, default or delay may apply to the court for an order that the register be rectified, and the court may either refuse the application with or without costs to be paid by the applicant or may, if satisfied of the justice of the case, make an order for the rectification of the register. R.S.O. 1970, c. 234, s. 179.

Application to court to rectify

160. Where land has been registered under this Act and the Minister of Natural Resources under the *Public Lands Act* directs an incorrect patent to be cancelled and a correct patent to be issued in its stead, the land registrar, upon receipt of the correct patent, if no conflicting instrument has been received, shall amend the entry on the register to accord with the correct patent or, where a conflicting instrument has been received, the land registrar, after notifying all persons interested, may make such amendment. R.S.O. 1970, c. 234, s. 180; 1972, c. 4, s. 12; 1979, c. 93, s. 51.

Correction of errors in patents after registration
R.S.O. 1980, c. 413

161.—(1) Upon receiving a certificate of the Minister of Natural Resources or the Deputy Minister of Natural Resources,

- (a) that a reservation of any class or kind of tree in letters patent to registered land is void;
- (b) that a reservation of mines or minerals in letters patent to registered land issued before the 6th day of May, 1913, is void; or
- (c) that a condition, proviso or reservation in letters patent to registered land, other than a reservation of any class or kind of tree or of mines or minerals is void,

Deletion from register of reservations, etc., in letters patent

the land registrar shall delete the reservation, condition or proviso from the register without application therefor. 1972, c. 1, s. 43 (5); 1979, c. 93, s. 51.

Transfer,
charge, etc.,
of mines and
minerals
reserved

(2) Where an owner or former owner has attempted to transfer, charge or otherwise convey any mines or minerals reserved in letters patent to registered land issued before the 6th day of May, 1913, upon receiving a certificate of the Minister of Natural Resources or Deputy Minister of Natural Resources that the reservation in the letters patent is void by statute, the land registrar shall make all proper entries to define the interests of those appearing to be entitled to the mines or minerals. R.S.O. 1970, c. 234, s. 181 (4); 1972, c. 4, s. 12; 1979, c. 93, s. 51.

Claims
against
Assurance
Fund

(3) No claim shall be sustained against the Assurance Fund respecting any right arising from any conveyance of mines or minerals reserved in letters patent issued before the 6th day of May, 1913. R.S.O. 1970, c. 234, s. 181 (5).

PART XI

REGULATIONS AND PROCEDURE

Power to
make rules

162.—(1) The Lieutenant Governor in Council may make regulations in respect of,

- (a) the mode in which the register is to be made and kept;
- (b) a code of standards and procedure for surveys and plans of registered land;
- (c) the mode in which any special register is to be made and kept;
- (d) the hours during which the land registry offices shall be kept open and the hours during which instruments shall be received for registration;
- (e) the forms to be observed, the precautions to be taken, the instruments to be used, the notices to be given, and the evidence to be adduced in all proceedings or in connection with the registration, and requiring any information in connection with any form, evidence or procedure to be verified by affidavit or declaration;
- (f) the custody, disposition and destruction of instruments and records of land registry offices;
- (g) the functions of land registrars relating to the first registration of land under this Act, and specifying which of

the functions shall be performed by the Director of Titles;

- (h) the duties that are to be performed by the Director of Titles, the land registrar and other officers, and the duties of the Director of Titles and of the land registrars that may be performed by other officers;
- (i) the costs to be charged by solicitors in or incidental to or consequential on the registration of land, or any other matter required to be done for the purpose of carrying out this Act, with power to require such costs to be payable by commission, percentage or otherwise, and to bear a certain proportion to the value of the land registered, or to be determined on such other principle as is expedient;
- (j) the fees to be paid under this Act, and regard may be had,
 - (i) in the case of the registration of land or of any transfer of land on the occasion of a sale, to the value of the land as determined by the amount of purchase money, or to the value of it to be ascertained in such manner as is prescribed,
 - (ii) in the case of registration of a charge or of a transfer of a charge, to the amount of the charge;
- (k) the taxation of costs and the persons by whom the costs are to be paid;
- (l) any matter by this Act directed or authorized to be prescribed;
- (m) any other matter or thing, whether similar or not to those above mentioned, in respect of which it is considered expedient to make rules for the purpose of carrying out this Act. R.S.O. 1970, c. 234, s. 182; 1972, c. 1, s. 43 (6); 1979, c. 93, ss. 47 (1-3), 51.

(2) The application of any provision of the regulations made under subsection (1) may be limited to one or more land titles divisions. 1979, c. 93, s. 47 (4). Application of regulations

163. The provisions of this Act respecting the procedures and records in land registry offices for land titles divisions are subject to any regulation made under section 97 of the *Registry Act*. R.S.O. 1970, c. 234, s. 183. Integration of land titles and registry records and procedures
R.S.O. 1980, c. 445

Custody of
registered
documents, etc.

164.—(1) Every registered instrument and deposited or registered plan is the property of the Crown and, except as otherwise provided in the regulations, shall be retained in the custody of the land registrar in his office. 1979, c. 93, s. 48(1).

Production
of instru-
ments, etc.,
copies

(2) Upon receipt of a request in writing and the prescribed fees, the land registrar,

- (a) shall produce for inspection in his office during office hours any instrument retained in his office or any book of the office relating to such instrument; and
- (b) shall supply a copy of the whole or a part of any instrument registered in his office and, when so requested, shall certify the copy under his hand and seal of office. R.S.O. 1970, c. 234, s. 184(2); 1979, c. 93, ss. 48(2), 51.

Penalty for
altering or
removing
records

165.—(1) Any person, except the land registrar or other officer when entitled by law so to do, who alters any book, record, plan or registered instrument in any land registry office for a land titles division, or who makes any memorandum, word or figure in writing thereon, whether in pencil or in ink, or by any other means or in any way adds to or takes from the contents of such book, record, plan or instrument, and any person who removes or attempts to remove any such book, record, plan or instrument from such office without lawful authority, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. 1972, c. 132, s. 36; 1979, c. 93, ss. 49(1), 51.

When
limitation
period
starts to
run

(2) For the purpose of determining the last day to prosecute, the limitation period in respect of an offence under subsection (1) shall start at the time that offence is first discovered by the land registrar. 1979, c. 93, s. 49(2).

Address for
service to be
endorsed on
certain
instruments

166.—(1) A land registrar shall not register,

- (a) a transfer;
- (b) a notice of an agreement of purchase and sale of land or an assignment thereof;
- (c) a notice of an option for the purchase of land or an assignment thereof;
- (d) a charge or a transfer thereof;
- (e) a notice of a lease, a sublease, an agreement to lease, an option to lease, an assignment of the lessor's interest in a lease or any assignment thereof;

- (f) a claim for a mechanic's lien or an assignment thereof;
- (g) a notice of security interest under the *Personal Property Security Act* or an assignment thereof; R.S.O. 1980, c. 375
- (h) a certificate of judgment or a final order of foreclosure of a mortgage;
- (i) a vesting order;
- (j) a notice of lien under section 32 of the *Condominium Act*; R.S.O. 1980, c. 84
- (k) an application to be registered as owner of land or of a charge; or
- (l) a caution,

unless there is endorsed on the instrument the address for service of each person obtaining or claiming an interest in or in respect of land under the instrument.

(2) An address for service provided under this section may be changed by registering a notice in the prescribed form. 1979, c. 93, s. 50, *part*. Idem

(3) The envelope containing a notice under this Act shall have printed thereon the return address of the land registry office. Return address

(4) On the return of an envelope containing a notice, the land registrar shall act in the matter requiring the notice to be given in the manner prescribed. R.S.O. 1970, c. 234, s. 185 (4, 5); 1979, c. 93, s. 51. Land registrar to act on return of notice

167. No application, order, affidavit, certificate, registration or other proceeding is invalid by reason of any mistake not affecting the substantial justice of the proceeding. R.S.O. 1970, c. 234, s. 186. Proceedings not void for want of form

168.—(1) An applicant under this Act is liable *prima facie* to pay all costs, charges and expenses incurred by or in consequence of his application, except where parties whose rights are sufficiently secured without their appearance object or where any costs, charges or expenses are incurred unnecessarily or improperly. Payment of costs

(2) The land registrar may order costs, either as between party and party or as between solicitor and client, to be paid by or to any person who is a party to a proceeding under this Act, and may give directions as to the fund out of which the costs shall be paid, regard being had to subsection (1). Scale of costs

Appeal from
land registrar's
order

(3) Any person aggrieved by an order of the land registrar made under this section may appeal to the Divisional Court, which may annul or, with or without modification, confirm the order.

Enforcement
of order

(4) If a person disobeys an order of the land registrar made under this section, the land registrar may certify the disobedience to the court, and thereupon, subject to the right of appeal, the order may be enforced in the like manner and by the like proceedings as if it were an order of the court.

Costs of
application
by trustee,
etc.

(5) The amount of all costs, charges and expenses properly incurred by a trustee, mortgagee or other person having a power of selling land of and incidental to an application to be registered shall be ascertained and declared by the land registrar, and shall be deemed to be costs, charges and expenses properly incurred by that person in the execution of the trust or in pursuance of the power, and he may retain or reimburse the same to himself out of any money coming to him under the trust or power, and he is not liable to an account in respect thereof. R.S.O. 1970, c. 234, s. 187; 1979, c. 93, s. 51.

Application
to withdraw
registered
land

169.—(1) Where after land has been registered special circumstances appear or subsequently arise that make it inexpedient that the land should continue under this Act, the owner may apply in the prescribed manner to the land registrar for the withdrawal of the land from the Act.

Certificate
by land
registrar

(2) If the owner proves before the land registrar that all persons interested in the land proposed to be withdrawn consent to its withdrawal and satisfies the land registrar that special circumstances exist that render the withdrawal of the land or a part thereof expedient, the land registrar may issue a certificate describing the land or such part thereof as the consent covers and as the land registrar considers proper in such a manner that the certificate can be properly registered in the registry office for the registry division in which the land is situate, and upon the certificate being issued this Act ceases to apply to the land described therein, and the land thereafter is subject to the ordinary laws relating to real estate and to the *Registry Act*.

R.S.O. 1980,
c. 445

Certificate
to be
counter-
signed by
Director

(3) The certificate of the land registrar under this section is not valid unless approved and countersigned by the Director of Titles. R.S.O. 1970, c. 234, s. 188 (1-3); 1979, c. 93, s. 51.

Application
of section

(4) This section does not apply to land registered under section 33. R.S.O. 1970, c. 234, s. 188 (5).

CHAPTER 231

Land Transfer Tax Act

1.—(1) In this Act,

Interpre-
tation

- (a) “collector” means any land registrar to whom any conveyance to which this Act applies is tendered for registration;
- (b) “convey” includes the granting, assigning, releasing, surrendering, leasing or disposing of land in Ontario, agreeing to sell land in Ontario, or the giving of an option upon or with respect to any land in Ontario, whether the effect of any of the foregoing is to bring into existence an interest of any kind in land or is only for the purpose of giving effect to or formal recognition to any interest of whatsoever kind that theretofore existed in land, but “convey” does not include any transfer of land for the purpose only of securing a debt or loan, or any transfer by a creditor for the purpose only of returning land that had been used as security for a debt or loan;
- (c) “conveyance” includes any instrument or writing by which land is conveyed and includes a final order of foreclosure under any mortgage or charge affecting land and a notice or caution in writing signifying the existence of any instrument or writing by which land is conveyed;
- (d) “land” includes lands, tenements and hereditaments and any estate, right or interest therein, a leasehold interest or estate, the interest of an optionee, the interest of a purchaser under an agreement to sell land, or goodwill attributable to the location of land or to the existence thereon of any building or fixture, and fixtures;
- (e) “Minister” means the Minister of Revenue;
- (f) “non-resident corporation” means a corporation incorporated, formed or otherwise organized in Canada or elsewhere,
 - (i) that has allotted and issued shares to which are attached 50 per cent or more of the voting

rights ordinarily exercisable at meetings of the shareholders of the corporation and that are owned by one or more non-resident persons, but this subclause does not apply where it is established to the satisfaction of the Minister that such one or more non-resident persons do not in fact directly or indirectly exercise control over the corporation and that subclause (v) does not apply to the corporation,

(ii) that has allotted and issued shares to which are attached 25 per cent or more of the voting rights ordinarily exercisable at meetings of the shareholders of the corporation and that are owned by any one non-resident person, but this subclause does not apply where it is established to the satisfaction of the Minister that such non-resident person does not in fact directly or indirectly exercise control over the corporation and that subclause (v) does not apply to the corporation,

(iii) one-half or more of the directors of which, or of the persons occupying the position of director by whatever name called, are individuals who are non-resident persons,

(iv) without share capital and one-half or more of the members of which are non-resident persons, or

(v) that is controlled directly or indirectly by one or more non-resident persons, including a non-resident corporation within the definition contained in the provisions of this clause other than this subclause;

(g) "non-resident person" means,

(i) an individual who is not ordinarily resident in Canada or who, if ordinarily resident in Canada, is neither a Canadian citizen nor an individual who has been lawfully admitted to Canada for permanent residence in Canada,

(ii) a partnership, syndicate, association or other organization of whatsoever kind of which one-half or more of the members are non-resident persons within the meaning of subclause (i), (iii) or (iv) or in which interests repre-

senting in value 50 per cent or more of the total value of the property of such partnership, syndicate, association or other organization are beneficially owned by non-resident persons within the meaning of subclause (i), (iii) or (iv),

- (iii) a trust in which non-resident persons within the meaning of subclause (i), (ii) or (iv) have 50 per cent or more of the beneficial interests in the corpus of the trust or in the income arising therefrom, and "trust" includes the trustees under such a trust in their capacity as the trustees thereof, or
- (iv) a non-resident corporation;
- (h) "prescribed" means prescribed by regulations made under this Act;
- (i) "recreational land" means land that is not used exclusively as residential land and that is predominantly used for the recreation and enjoyment of its owner or lessee or those, other than persons using the land for agricultural purposes, who are permitted by such owner or lessee to be on the land;
- (j) "residential" means, when used in respect of land, the land subjacent to a building that is the main and principal residence of the occupants, whether as owners or tenants, and includes all immediately contiguous lands necessary and used for such residence;
- (k) "tax" means the tax imposed by this Act;
- (l) "transferee" includes a person to whom land is conveyed and any person whose interest in land is increased, created or given effect to as the result of a conveyance;
- (m) "transferor" includes any person making a conveyance of land to a transferee;
- (n) "Treasurer" means the Treasurer of Ontario and Minister of Economics;
- (o) "unrestricted land" means land that,
 - (i) under a by-law passed pursuant to section 39 of the *Planning Act*, or under an order made pursuant to section 35 of that Act is zoned for commercial or industrial use, or

R.S.O. 1980,
c. 379

R.S.O. 1980,
c. 31

- (ii) where subclause (i) does not apply, is assessed under the *Assessment Act* for residential assessment or is lawfully used and occupied or was last lawfully used or occupied for commercial, industrial or residential purposes,

and that is not assessed under the *Assessment Act*, or is not actually used, as farm or agricultural land, woodlands, recreational land or as an orchard;

(p) "value of the consideration" includes,

- (i) the gross sale price or the amount expressed in money of any consideration given or to be given for the conveyance by or on behalf of the transferee and the value expressed in money of any liability assumed or undertaken by or on behalf of the transferee as part of the arrangement relating to the conveyance and the value expressed in money of any benefit of whatsoever kind conferred directly or indirectly by the transferee on any person as part of the arrangement relating to the conveyance,

- (ii) in the case of a final order of foreclosure under any mortgage or charge affecting land, the lesser of,

- (A) the amount owed under the mortgage or charge at the time it was foreclosed, including principal, interest and all other costs and expenses, other than municipal taxes, secured by the mortgage or charge and owing at that time, or

- (B) an amount established to the satisfaction of the Minister to be equal to the fair market value of the land that is subject to the mortgage or charge,

- (iii) in the case where a lease of land, a transfer of the interest of a lessee under a lease of land, or a notice in writing signifying the existence of a lease of land or of a transfer of the interest of a lessee under a lease of land is not exempt from tax by virtue of subsection (4), the fair market value, ascertained as at the time of the tender for registration, of the land to which the lease extends or

of a smaller portion of such land if only such smaller portion is conveyed,

- (iv) in the case of a notice or caution in writing signifying the existence of any instrument or writing by which land is conveyed and that is not a notice in writing described in subclause (iii) the value of the consideration, determined under subclause (i) or (ii) for the land conveyed by the instrument or writing that is referred to in such notice or caution in writing that is not a notice in writing described in subclause (iii), or
- (v) in the case of a conveyance of land from a trustee (whether or not the trustee is so described in the conveyance) to a person to whom or for whose benefit any equitable or beneficial interest in the land has been transferred by a conveyance or conveyances that have not been registered, the value of the consideration determined under subclauses (i) to (iv), whichever is applicable, in respect of the unregistered conveyances made to such person. 1974, c. 8, s. 1 (1); 1974, c. 93, s. 1 (1-3); 1977, c. 14, s. 1 (1); 1979, c. 26, s. 1.

(2) For the purposes of clause (1) (f), “control” means control by ^{Control defined} another corporation, individual or trust that is in fact exercising effective control either directly or indirectly and either through the holding of shares of the corporation or of any other corporation or through the holding of a significant portion of any class of shares of the corporation or of the outstanding debt of the corporation or of any shareholder or member of the corporation, or by any other means whether of a like or different nature. 1974, c. 8, s. 1 (2).

(3) For the purpose of clause (1) (g), an individual shall be ^{Ordinarily resident defined} considered to be ordinarily resident in Canada if, at the time the expression is being applied,

- (a) he has sojourned in Canada during the next preceding twenty-four months for a period of, or periods the aggregate of which is, 366 days or more;
- (b) he is a member of the Canadian Forces required to reside outside Canada;
- (c) he is an ambassador, minister, high commissioner, officer or servant of Canada, or is an agent-general, officer or servant of a province of Canada, and resided

in Canada immediately prior to appointment or employment by Canada or a province of Canada or is entitled to receive representation allowances;

(d) he is performing services in a country other than Canada under an international development assistance program of the Government of Canada that is prescribed for the purposes of paragraph 250 (1) (d) of the *Income Tax Act* (Canada), and resided in Canada at any time in the three month period preceding the day on which such services commenced; or

R.S.C. 1952,
c. 148

(e) he resides outside Canada and is the spouse or child of, and is living with, an individual described in clause (b), (c) or (d). 1974, c. 8, s. 1 (3); 1974, c. 93, s. 1 (5).

No tax on
certain
leases

(4) Notwithstanding any other provision of this Act, no tax is payable on the tender for registration of a conveyance that is a lease of land, the transfer of the interest of a lessee under a lease of land, or a notice in writing signifying the existence of a lease of land or of a transfer of the interest of a lessee under a lease of land if the lease, at the time the lease or transfer or notice of either of them is tendered for registration, is for an unexpired term which, including any renewals or extensions of such term provided for in the lease, cannot exceed fifty years. 1974, c. 93, s. 1 (6).

Tax
imposed

2.—(1) Every person who tenders for registration in Ontario,

(a) a conveyance whereby any land is conveyed to or in trust for any transferee who is not a non-resident person; or

(b) a conveyance that is a conveyance only of unrestricted land and upon which is endorsed or to which is attached a certification by the Minister, or by some person authorized by the Minister in writing to make the certification, that all of the land being conveyed is unrestricted land,

shall, before the conveyance is registered, pay a tax computed at the rate of two-fifths of 1 per cent of the value of the consideration for the conveyance up to and including \$45,000, and at the rate of four-fifths of 1 per cent upon the remainder of the value of the consideration. 1977, c. 14, s. 2 (1); 1979, c. 26, s. 2 (1).

Idem

(2) Every person who tenders for registration in Ontario a conveyance whereby any land that is not unrestricted land is conveyed to or in trust for any transferee who is a non-resident person shall, before the conveyance is registered,

pay a tax computed at the rate of 20 per cent of the value of the consideration for the conveyance. 1974, c. 8, s. 2 (2); 1977, c. 14, s. 2 (2).

(3) Where the same conveyance may be registered in more than one office under the registry system, in more than one office under the land titles system, or under both the registry system and the land titles system, the tax is payable only once in respect of the first of such conveyances tendered for registration and where the Minister or a collector is satisfied that the value of the consideration for a conveyance that has been registered is the value of the consideration for a subsequently registered conveyance that does not create with respect to the land conveyed any beneficial interest therein in any person beyond that evidenced by the first mentioned conveyance, and if the conveyances are made as part of the same transaction, tax is payable only once and upon the value of the consideration for the first of such conveyances that was registered. 1974, c. 8, s. 2 (3); 1974, c. 93, s. 2 (1).

Tax to be payable on one registration only

(4) No tax is payable where the only transferee in a conveyance that is tendered for registration is the Crown or a Crown agency within the meaning of the *Crown Agency Act*. 1974, c. 8, s. 2 (4).

Exemption

R.S.O. 1980, c. 106

(5) Where the Minister or some person authorized by him in writing to do so has indicated over his signature upon any conveyance that such tax as is payable has been paid or that no tax is payable, the conveyance may be registered without the payment of tax to the collector and without the production of the affidavits required by this Act, but the Minister or a person acting under his authority shall make the certification provided for by this subsection only when he is satisfied that no tax is payable or that all tax is paid or that security for the payment of the tax has been furnished to the Minister or to a collector in a form and of a kind that is acceptable to the Minister. 1974, c. 8, s. 2 (5); 1974, c. 93, s. 2 (2).

Minister's certification

(6) Where only a part of the land being conveyed is unrestricted land and the conveyance is to or in trust for any non-resident person, the Minister may, to the extent that he considers it practicable, determine what amount of the value of the consideration for the conveyance is reasonably attributable to the unrestricted land being conveyed, and the person tendering the conveyance for registration is, notwithstanding subsection (1) or (2), liable to a tax computed at the rate of four-fifths of 1 per cent of such amount so determined, and is liable to a tax computed at the rate of 20 per cent of the amount of the value of the

Apportionment of consideration

consideration for the conveyance that is determined by the Minister not to be reasonably attributable to the unrestricted land being conveyed. 1977, c. 14, s. 2 (3); 1979, c. 26, s. 2 (2).

Returns by
collector

3. Every collector shall, in the first week of each month or at such other time as the Minister may from time to time require in writing, send to the Minister a statement of the amount of tax collected by him during the previous month or during such other period of time as the Minister shall in writing specify, and the collector shall pay over the amount of such tax to the Treasurer for the uses of Ontario. 1974, c. 8, s. 3.

Contents
of
affidavit
as to
consideration

4.—(1) There shall be filed with the collector and attached by him to the conveyance to which it relates an affidavit in the prescribed form setting out the true value of the consideration for the conveyance, the true amount in cash and the value of any property or security included in the value of the consideration, the amount or value of any lien or encumbrance subject to which the conveyance was made, and such other information as the Minister may prescribe to be disclosed in the affidavit. 1974, c. 8, s. 4 (1).

Affidavit
by whom
to be made

(2) The affidavit required by subsection (1) shall be made by the persons who are required to make the affidavit required by subsection (3), and notwithstanding subsection (3), the Minister may prescribe a form in which the affidavits required by subsection (1) or (3) are combined as one affidavit for the purposes of those subsections. 1977, c. 14, s. 3 (1).

Affidavit
as to
residence

(3) In addition to the affidavit required by subsection (1), there shall be filed with the collector and attached by him to the conveyance to which it relates an affidavit in such form as is prescribed, and the affidavit shall be made by,

- (a) each transferee to whom or in trust for whom any land is conveyed by the conveyance to which the affidavit relates;
- (b) each trustee to whom any land is conveyed and who is shown as a trustee in the conveyance to which the affidavit relates;
- (c) each transferee named in the conveyance to which the affidavit relates;

- (d) an agent of any person referred to in clause (a), (b) or (c), if the agent is authorized in writing to make the affidavit;
- (e) the solicitor acting in the transaction as the solicitor for any person referred to in clause (a), (b) or (c);
- (f) the prescribing officer authorized to act for a corporation that is a person referred to in clause (a), (b) or (c), or the Vice-President, Manager, Secretary, Director or Treasurer authorized to act for such corporation; or
- (g) either of two transferees who are married to each other and both of whom are transferees referred to in clause (a), (b) or (c), where the transferee making the affidavit is acting on behalf of the other of such transferees,

and such affidavit shall state whether the transferee to whom the land is being conveyed is a non-resident person or the trustee for a non-resident person, and shall state such other information as is required in order to complete the affidavit.

(4) The affidavit required by subsection (1) or (3) shall state that the person making it has personal knowledge of the facts stated in it, and shall state, where applicable, the capacity in which such person is making the affidavit and the name of any transferee on whose behalf such person is making the affidavit. 1977, c. 14, s. 3 (2). Affidavits, what to contain

(5) If the collector is not satisfied that the affidavit required by subsection (1) sets out the true value of the consideration for the conveyance, he may refuse to register the conveyance to which the affidavit relates until the Minister has signified over his signature that he is satisfied that the value of the consideration stated in the affidavit is the true value of the consideration. 1974, c. 8, s. 4 (5). Affidavit to be referred to Minister

(6) Except as provided in subsection (7) or (8), where a conveyance is tendered for registration without the affidavit required by subsection (3), tax is payable at the rate provided in subsection 2 (2), and the collector shall not register the conveyance until such tax is paid, but if it is subsequently established to the satisfaction of the Minister that, had the affidavit required by subsection (3) been furnished to the collector, tax would have been payable as provided in subsection 2 (1), the Minister may refund the amount paid under this subsection in excess of the tax pro- Tax payable when affidavit under subs. (3) not furnished

vided for in subsection 2 (1). 1974, c. 8, s. 4 (6); 1974, c. 93, s. 3 (1); 1977, c. 14, s. 3 (3).

Affidavit as
to residence
not required

R.S.O. 1980,
cc. 106, 303

(7) Notwithstanding subsection (3), no affidavit is required under that subsection on the tender for registration of a conveyance to or in trust for a transferee who is expressly named in the conveyance and who is Her Majesty in right of Ontario, Her Majesty in right of Canada, a Crown agency within the meaning of the *Crown Agency Act*, the corporation of a municipality, including a district, metropolitan or regional municipality, in Ontario, a local board, as defined in the *Municipal Affairs Act*, of any such municipality in Ontario or Ontario Hydro or any corporation prescribed by the Minister by regulation or any individual acting in an official capacity prescribed by the Minister by regulation, but the Minister may make regulations under this subsection only if he is satisfied that the corporation or the official capacity of the individual is such that the corporation or the individual acting in his official capacity is not, and is not likely to become, a non-resident person. 1974, c. 93, s. 3 (2).

Idem

(8) Notwithstanding subsection (3), where a conveyance tendered for registration has endorsed upon it or attached to it the certification in accordance with clause 2 (1) (b) that all of the land being conveyed is unrestricted land, no affidavit is required under subsection (3) on the tender of such conveyance for registration. 1977, c. 14, s. 3 (4).

Payment
of tax
under
protest

5.—(1) Where the right of the collector to require payment of the tax is disputed by the person tendering a conveyance for registration, the tax may be paid under protest and the collector shall give a receipt in writing signed by him for the amount paid and stating that it was paid under protest, and he shall thereupon refer the matter for the decision of the Minister or of such official as the Minister appoints, who may order the refund of the tax or any part thereof to the person who paid it.

Determina-
tion of
issues of
law

(2) In any dispute over the liability to tax of any person, the Minister may, after the tax has been paid, and if the dispute involves the interpretation of a provision of this Act, or involves an issue of law in which no facts are in dispute, or involves the proper inference to be drawn from facts that are not in dispute, agree in writing with the disputing party as to the undisputed facts and thereafter apply to the Supreme Court to have the issue in dispute

determined, and if the Minister does not make the application within six weeks of the date upon which the undisputed facts have been agreed upon in writing, the other party to the dispute may apply to the court to have the issue determined. 1974, c. 8, s. 5.

6.—(1) Every person who knowingly contravenes any ^{Offence} provision of this Act or who knowingly makes an affidavit required by this Act that falsely discloses the value of the consideration for any conveyance of land or falsely states that a person who is a non-resident person is not a non-resident person, is guilty of an offence and on conviction is liable to a fine of not less than the amount of tax that was not paid to the collector as provided for in this Act plus an amount of not less than \$50 and not more than \$1,000.

(2) For the purpose of any proceeding taken under this Act, the facts necessary to establish compliance on the ^{Compliance, how proved} part of the Minister with this Act as well as the failure of any person to comply with the requirements of this Act shall, unless evidence to the contrary satisfactory to the court is adduced, be sufficiently proved in any court of law by affidavit of the Minister or of any officer of the Ministry of Revenue.

(3) A proceeding to prosecute an offence under this Act shall ^{Limitation} be commenced within six years of the time when the offence occurred. 1974, c. 8, s. 7, *revised*.

7.—(1) Where a person has paid an amount under this Act ^{Refund} as tax that is not payable as tax under this Act, the Minister may, upon receipt of satisfactory evidence that the amount was wrongly paid, authorize the Treasurer to refund such amount or any part thereof, but no refund shall be made unless it is applied for within three years after the date of the payment of any amount that is alleged not to have been payable as tax under this Act.

(2) Where a conveyance has been tendered for regis- ^{Idem} tration that conveys land both to non-resident persons and to persons who are not non-resident persons, the Minister may refund to the persons who are not non-resident persons an amount equal to the difference between,

- (a) the amount that would result from the application of the rates of tax in subsection 2 (1) to the value of the consideration attributable in the opinion of the

Minister to the land conveyed to persons who are not non-resident persons; and

- (b) the amount of tax paid on the value of the consideration attributable in the opinion of the Minister to land conveyed to persons who are not non-resident persons,

but no refund under this subsection shall be made if the land is held in joint ténancy by the non-resident person and the persons who are not non-resident persons or if the Minister is of the opinion that the land conveyed to persons who are not non-resident persons cannot readily be distinguished from the land conveyed to non-resident persons. 1974, c. 8, s. 8.

Refund of
tax where
land not
transferred

(3) Where a conveyance is registered that is a notice or caution in writing signifying the existence of any instrument or writing by which land is conveyed, and the instrument or writing described in the notice or caution evidences an agreement to transfer or extinguish an interest in land, the Treasurer shall, where the Minister is satisfied that the transfer or extinguishment contemplated in the agreement has not taken place, refund any tax paid on the tender for registration of the conveyance. 1974, c. 93, s. 5.

Refunds on
conveyances
of
unrestricted
land

(4) Where tax has been paid with respect to the registration of a conveyance of unrestricted land to or in trust for a non-resident person, and it is established to the satisfaction of the Minister that the certification in accordance with clause 2 (1) (b) was erroneously refused after full and complete disclosure of all relevant circumstances and facts to the person requested to make the certification, the Minister may refund any tax that would not have been payable had the certification been properly given, provided that application for such refund is made within three years of the payment of the tax of which a refund is sought. 1977, c. 14, s. 4.

Investiga-
tion

8.—(1) Any person thereunto authorized by the Minister for any purpose related to the administration or enforcement of this Act may at all reasonable times enter into any premises or place where any business is carried on or any property is kept or where anything is done in connection with any business or where any books or records are or should be kept and,

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other

document that relates or may relate to the information that is or should be in the books or records or to the amount of tax payable under this Act;

- (b) examine property described in any conveyance or any property, process or matter an examination of which may, in his opinion, assist him in determining the accuracy of any affidavit required by this Act or in ascertaining the information that is or should be in the books or records or in such affidavit, or the amount of any tax payable under this Act;
- (c) require any officer, director, agent or representative of a transferee a conveyance to whom has been registered as a result of which there may be a possible liability to pay tax under this Act, and any person on the premises to give him all reasonable assistance with his audit or examination and to answer all questions relating to the audit or examination either orally or, if he so requires, in writing, on oath or by statutory declaration and, for that purpose, he may require such person to attend at the premises or place with him; and
- (d) if during the course of any audit or examination it appears to him that there has been a violation of this Act or the regulations made under this Act, seize and take away any of the records, books, accounts, vouchers, letters, telegrams and other documents and retain them until they are produced in any court proceedings.

(2) The Minister may, for any purpose relating to the administration or enforcement of this Act, by registered letter or by a demand served personally, require from any person any information or additional information, or the production, or production on oath, of any books, letters, accounts, invoices, statements (financial or otherwise) or other documents within such reasonable time as is stipulated therein, provided that, in the opinion of the Minister or of the person authorized by him, it is necessary to make the demand in order to determine the liability or possible liability to tax under this Act. ^{Idem}

(3) Where a book, record or other document has been seized, examined or produced under this section, the person by whom it is seized or examined or to whom it is produced, or any officer of the Ministry of Revenue, may make or cause to be made one or more copies thereof, and a ^{Copies as evidence}

document purporting to be certified by the Minister or a person thereunto authorized by the Minister to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way.

Compliance (4) No person shall hinder or molest or interfere with any person doing anything that he is authorized by this section to do or shall prevent or attempt to prevent any person doing any such thing, and notwithstanding any other law to the contrary, every person shall, unless he is unable to do so, do everything he is required by this section to do.

Offence (5) Every person who has failed to comply with or has contravened this section is guilty of an offence and, in addition to any penalty otherwise provided, is liable on conviction to a fine of \$25 for each day during which the default continues. 1974, c. 8, s. 9.

**Adminis-
tration of
oaths**
R.S.O. 1980,
cc. 230, 445

9. A person authorized to administer an oath under the *Land Titles Act* or the *Registry Act* may administer an oath for any of the purposes of this Act. 1974, c. 8, s. 11.

Assessment **10.**—(1) Where any person responsible for the payment of tax fails to pay it as required under this Act, the Minister may make an assessment of the tax for which such person is responsible and which has not been paid.

**Notice of
assessment**

(2) Where the Minister has made an assessment under subsection (1), he shall send by mail or by registered mail or deliver by personal service a notice of assessment to the person so assessed, and the amount of the assessment shall be remitted to the Minister by the person so assessed within thirty days from the date of mailing or delivery of the notice of assessment.

Idem

(3) Where the Minister has made an assessment under subsection (1), the notice of assessment may provide that the amount assessed is payable forthwith. 1974, c. 8, s. 12 (1-3).

**Limitation
on
assessment**

(4) The Minister may assess or reassess any person for any tax payable by him under this Act within four years from the day such tax became payable, except that, where

the Minister establishes that a person has made any misrepresentation that is attributable to neglect, carelessness or wilful default, or has committed any fraud, in supplying any information under this Act, in making any affidavit required by this Act, or in omitting to disclose any information, the Minister may assess or reassess at any time he considers reasonable the tax payable by such person. 1977, c. 14, s. 5.

(5) Where it appears from an inspection, audit or examination of the books of account, records or documents of any person that this Act or the regulations have not been complied with, the person making the inspection, audit or examination shall calculate the tax payable in such manner and form and by such procedure as the Minister considers adequate and expedient, and the Minister shall assess the amount of the tax. ^{Assessment on inspection}

(6) The Minister shall send by mail or by registered mail or deliver by personal service a notice of the assessment made under subsection (4) or (5) to the person so assessed at his latest known address, and the notice may provide that the amount assessed is payable forthwith. ^{Notice of assessment under subs. (4) or (5)}

(7) Liability for tax is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made. ^{Liability to tax not affected}

(8) The Minister is not bound by any information delivered by or on behalf of any person responsible for the payment of the tax and may, notwithstanding any information that has been delivered or if no information has been delivered, assess the tax payable under this Act. ^{Minister not bound by information}

(9) An assessment, subject to being varied or vacated on an objection or appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto. ^{Assessment valid and binding}

(10) The amount of any assessment is payable within the time required by the notice of assessment whether or not an objection or appeal from the assessment is made or taken. 1974, c. 8, s. 12 (5-10). ^{Idem}

11.—(1) Where a person objects to an assessment made under section 10 he may, within ninety days after the day of mailing or delivery by personal service of the notice of assessment, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts. ^{Notice of objection}

- Service** (2) A notice of objection under this section shall be served by being sent by registered mail addressed to the Minister.
- Recon- sideration** (3) Upon receipt of a notice of objection, the Minister shall with all due despatch reconsider the assessment and vacate, confirm or vary the assessment or reassess, and he shall thereupon notify the person who has made the objection of his action by registered mail. 1974, c. 8, s. 13.
- Appeal** **12.**—(1) After the Minister has given the notification required by subsection 11 (3), a person who has served notice of objection under section 11 may appeal to the Supreme Court to have the assessment vacated or varied or reassessed, but no appeal under this section shall be instituted after the expiration of ninety days from the day on which notice has been mailed to such person under subsection 11 (3). 1974, c. 8, s. 14 (1), *revised*.
- Appeal, how instituted** (2) An appeal to the Supreme Court shall be instituted by serving on the Minister a notice of appeal in duplicate in the prescribed form and by filing a copy thereof with the Registrar of the Supreme Court or with the Local Registrar of the Supreme Court for the county, district or judicial district in which is situate the land the tax on the tender for registration of a conveyance of which is under appeal. 1974, c. 8, s. 14 (2); 1974, c. 93, s. 6.
- Service** (3) A notice of appeal shall be served on the Minister by being sent by registered mail addressed to the Minister.
- Contents of notice of appeal** (4) The person appealing shall set out in his notice of appeal a statement of the allegations of fact and the statutory provisions and reasons that he intends to submit in support of his appeal.
- Reply to notice of appeal** (5) After the service on him of a notice of appeal under this section, the Minister shall with all due despatch serve on the person appealing and file in the Supreme Court where the notice of appeal was filed a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he considers relevant.
- Matter deemed action** (6) Upon the filing in the Supreme Court of the material referred to in subsection (5), the matter shall be deemed to be an action in the court, and the practice and procedure of the court, including the right of appeal and the practice

and procedure relating to appeals, apply to every matter that is deemed to be an action under this subsection, and every judgment and order given or made in every such action may be enforced in the same manner and by the like process as a judgment or order given or made in an action commenced in the court.

(7) The court may dispose of an appeal by allowing it, by dismissing it, or by allowing it in part and directing the Minister to vacate the assessment, vary the assessment or reconsider the assessment and reassess as indicated by the judgment of the court. ^{Disposition of appeal}

(8) In delivering judgment disposing of an appeal, the court may order payment or refund of tax by the appellant or by the Treasurer, as the case may be, and may make such order as to costs as is considered proper. ^{Idem}

(9) No assessment shall be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observance of any directory provision of this Act. ^{Irregularities}

(10) The time within which a notice of objection under subsection 11 (1) or a notice of appeal under subsection (1) of this section is to be served may be extended by the Minister if application for extension is made before expiration of the time for service of the notice of objection or notice of appeal, as the case may be. 1974, c. 8, s. 14 (3-10). ^{Extension of time}

13.—(1) Upon default of payment of an amount assessed under section 10, ^{Recovery of tax}

(a) the Minister may bring an action for the recovery thereof in any court in which a debt or money demand of a similar amount may be collected, and every such action shall be brought and executed in and by the name of the Minister or his name of office and may be continued by his successor in office as if no change had occurred and shall be tried without a jury; and

(b) the Minister may issue a warrant directed to the sheriff of any county or district in which any property of a person assessed for tax under this Act is located or situate for the amount of the tax, interest and penalty or any of them owing by him, together with interest thereon from the date of the issue of the warrant and the costs and expenses of the sheriff, and such warrant has the

same force and effect as a writ of execution issued out of the Supreme Court on a judgment in favour of the Crown.

Compliance
to be
proved by
affidavit

(2) For the purpose of any proceeding taken under this Act, the facts necessary to establish compliance on the part of the Minister with this Act as well as the failure of any person to comply with the requirements of this Act shall, unless evidence to the contrary satisfactory to the court is adduced, be sufficiently proved in any court of law by affidavit of the Minister or of any officer of the Ministry of Revenue.

Remedies
for recovery
of tax

(3) The use of any of the remedies provided by this section does not bar or affect any of the other remedies therein provided, and the remedies provided by this Act for the recovery and enforcement of the payment of any tax imposed by this Act are in addition to any other remedies existing by law, and no action or other proceeding taken in any way prejudices, limits or affects any lien, charge or priority existing under this Act or at law in favour of the Crown. 1977, c. 14, s. 6, *part*.

Garnishment

14.—(1) When the Minister has knowledge or suspects that a person is or is about to become indebted or liable to make any payment to a person liable to make a payment under this Act, he may, by registered letter or by a letter served personally, require the first-named person to pay the moneys otherwise payable to the second-named person in whole or in part to the Treasurer on account of the liability under this Act.

Idem

(2) The receipt of the Treasurer for moneys paid as required under this section is a good and sufficient discharge of the original liability to the extent of the payment.

Liability
of debtor

(3) Every person who has discharged any liability to a person liable to make a payment under this Act without complying with the requirements under this section is liable to pay to the Treasurer an amount equal to the liability discharged or the amount that he was required under this section to pay to the Treasurer, whichever is the lesser.

Service on
garnishee

(4) Where a person who is or is about to become indebted or liable to make a payment to a person liable to make a payment under this Act carries on business under a name or style other than his own name, the registered or other letter under subsection (1) may be addressed to the name or style under which he carries on business and, in the case of personal service, shall be deemed to have been validly

served if it has been left with an adult person employed at the place of business of the addressee.

(5) Where the persons who are or are about to become indebted or liable to make a payment to a person liable to make a payment under this Act carry on business in partnership, the registered or other letter under subsection (1) may be addressed to the partnership name and, in the case of personal service, shall be deemed to have been validly served if it has been served on one of the partners or left with an adult person employed at the place of business of the partnership. Idem

(6) Subject to the provisions of the *Wages Act*, where the Minister has under this section required an employer to pay to the Treasurer on account of an employee's liability under this Act moneys otherwise payable by the employer to the employee as remuneration, the requirement is applicable to all future payments by the employer to the employee in respect of remuneration until the liability under this Act is satisfied and operates to require payments to the Treasurer out of each payment of remuneration of such amount as may be stipulated by the Minister in the registered letter or letter served personally. Garnishment of wages
R.S.O. 1980,
c. 526

(7) Where any person, without reasonable excuse, has failed to remit to the Treasurer the moneys as required under this section, the Minister may apply before a judge of the Supreme Court for an order directing such person to remit the moneys which he has failed to remit. 1977, c. 14, s. 6, *part*. Failure to remit

15.—(1) Where the tax imposed by this Act is not paid at the time provided for, interest on the unpaid tax shall be paid to the Treasurer at the rate of 9 per cent per annum or at such other rate as may be prescribed by the Lieutenant Governor in Council by regulation but no interest is payable for any period of time prior to the 10th day of April, 1974. Interest on unpaid tax

(2) Any payment received by the Treasurer or a collector on account of any tax under this Act shall first be applied to any interest payable on the tax with respect to which the payment is made, but this subsection does not apply to payments on account of any fine or penalty payable under this Act. 1974, c. 8, s. 15. Application of payment

16.—(1) Where tax has been paid or may be payable on the registration of a conveyance of land to a non-resident Deferral or remission of tax on certain conveyances to non-residents

person, and that non-resident person satisfies the Minister that the land was or is to be acquired,

- (a) for the purpose of the development and resale of land for residential, commercial or industrial purposes;
- (b) for the purpose of establishing, expanding or relocating any active commercial or industrial business that is or will be carried on by the non-resident person who shall undertake to obtain, within such time as is agreed upon with the Minister, any zoning changes necessary to permit the land to be used as proposed and to complete, within such time as is agreed upon with the Minister, the establishment, expansion or relocation for which the land was or is to be acquired;
- (c) by a non-resident person who is a Canadian citizen and who undertakes to the Minister to cease to be a non-resident person within five years from the date of the grant of a deferral or remission under this subsection with respect to the acquisition of the land; or
- (d) by a non-resident person who is an individual other than a Canadian citizen and who undertakes to the Minister to cease to be a non-resident person within two years from the date of the grant of a deferral or remission under this subsection with respect to the acquisition of the land,

the Minister may, with the approval of the Lieutenant Governor in Council, defer the payment of the tax, or remit the tax paid, on such conditions as to the use and development of the land or otherwise as are considered advisable and sufficient to ensure the development of the land as proposed or compliance with any undertakings given by the non-resident person acquiring the land, and any tax deferred or remitted under this subsection constitutes a first lien and charge in favour of Her Majesty in right of Ontario on the land so acquired or to be acquired, and the lien and charge shall be effective upon registration by the Minister of a notice thereof, and the Minister may discharge the lien and charge in whole or in part as the conditions that he has imposed or the undertakings that have been given to him are fulfilled or complied with, and may, where he considers it necessary and advisable

to enable the performance of any condition or undertaking, postpone, release or waive the lien and charge with respect to all or any part of any land affected by the lien and charge. 1974, c. 93, s. 7 (1); 1977, c. 14, s. 7 (1).

(2) A deferral or remission under subsection (1) may not ^{Idem} exceed the amount by which the rate of tax imposed by subsection 2 (2) exceeds the rate of tax imposed by subsection 2 (1), but may otherwise be for all or any part of the tax. 1974, c. 8, s. 16 (2); 1974, c. 93, s. 7 (2).

(3) Where tax is deferred under subsection (1) upon con- ^{Deferred tax cancelled} ditions that are fulfilled, the amount of the tax so deferred is thereupon cancelled and no longer owing as tax under this Act, and where the conditions upon which any tax has been remitted under subsection (1) are not fulfilled, the tax so remitted thereupon becomes payable. 1974, c. 8, s. 16 (3).

(4) Upon the tender for registration of a conveyance ^{Reduction of tax in certain cases} that is described in any of clauses (a) to (e) and that is made to a non-resident person, the tax imposed by subsection 2 (2) shall, notwithstanding any other provision of this Act, be reduced to an amount equal to the tax that would result if only the rates of tax mentioned in subsection 2 (1) were applicable,

(a) the tender for registration of a conveyance to which is attached an affidavit made by the transferee named in the conveyance and stating,

(i) that he has been lawfully admitted to Canada and is lawfully in Canada as an immigrant admitted under the *Immigration Act* (Canada) ^{R.S.C. 1970, c. I-2} for permanent residence in Canada, or that he is lawfully in Canada for the purpose of engaging in a trade, profession, calling, occupation or employment that he is authorized to engage in in Canada, and the nature of that trade, profession, calling, occupation or employment,

(ii) that the land being conveyed to him is being acquired by him for the purpose of enabling him to establish thereon his principal residence in Canada, and will not be used as the residence of persons other than the transferee or members of his family or members of his usual domestic establishment,

R.S.C. 1970,
c. I-2

- (iii) the number and expiration date of the employment visa, if any, issued to him pursuant to the *Immigration Act* (Canada) or regulations made thereunder and the length of time during which he intends to engage in the trade, profession, calling, occupation or employment for which he was admitted into Canada, and
 - (iv) that he is not in Canada as a tourist or visitor or for the purpose of passing through Canada to another country, or as a student admitted to Canada under the provisions of paragraph 7 (1) (f) of the *Immigration Act* (Canada);
- (b) the tender for registration of a conveyance to which is attached an affidavit made by the transferee named in the conveyance and stating,
- (i) that the transferee is a Canadian citizen, and
 - (ii) that the land being conveyed to him is being acquired by him for the purpose of enabling him to establish thereon a place of residence or recreation to be his principal residence or principal recreational property upon his return to Canada to take up permanent residence in Canada;
- (c) the tender for registration of a conveyance to which is attached an affidavit made by the transferee named in the conveyance, or where such transferee is a corporation, by an authorized officer of that corporation, stating,
- (i) that the transferee, on and after the 9th day of April, 1974, has continuously occupied premises in Canada where the transferee carried on an active commercial or industrial business that is not principally,
 - (A) the rental of land or premises for possession or occupancy for a period of one month or more,
 - (B) the acquisition of land,
 - (C) the sale of land owned by the seller,

- (D) the holding of land, or
 - (E) the development of land,
 - (ii) the nature of such business so carried on by the transferee, and the principal location in Canada from which such business is carried on, and
 - (iii) that the land being conveyed to the transferee is being acquired for the purpose of enabling the transferee to acquire the freehold of only the leased premises on which such business is being carried on and not of other premises, or is being acquired for the purpose of expanding or relocating the operations of such business where such expansion or relocation is not prevented by any zoning restrictions affecting the land conveyed;
- (d) the tender for registration of a conveyance to which is attached an affidavit made by the transferee named in the conveyance, or where such transferee is a corporation, by an authorized officer of that corporation, and stating that the land being conveyed to him is being acquired by him as part of his normal business practice and either,
- (i) for the principal purpose of selling the land to an employee of the transferee or to such employee and his spouse as the residence of that employee and members of his family or members of his usual domestic establishment, or
 - (ii) for the principal purpose of making the land available for the exclusive use of his employees and members of their families or members of their usual domestic establishments as a place of residence; or
- (e) the tender for registration of a conveyance to which is attached an affidavit made by the transferee named in the conveyance, or where such transferee is a corporation, by an authorized officer of that corporation, stating,
- (i) that the land being conveyed to him is being acquired by him as the result of a final order of foreclosure under a mortgage

or charge affecting the land or is being acquired in any other manner for the sole purpose of satisfying the obligations of the transferor to the transferee under a mortgage or charge affecting the land,

- (ii) that the land being conveyed to him is being acquired by him only for the purpose of safeguarding or giving effect to rights or interests of the transferee as mortgagee or chargee and in respect of an outstanding loan that was owed by the transferor to the transferee and that is in default,
- (iii) that the transferee is dealing in all respects with the transferor as though the parties were strangers, and
- (iv) that the conveyance was not arranged with the intention of defeating the incidence of tax imposed by this Act.

Reduction of consideration on land acquired to replace land compulsorily taken

(5) Where it is established to the satisfaction of the Minister that land being acquired by a person is acquired for the purpose of replacing land that was taken from him under statutory authority, that was sold by him to a person by whom notice of an intention to take the land under statutory authority was given, or that was sold by him to a person having the power to take the land under statutory authority and in the reasonable expectation that, had the land not been so sold, it would have been taken from him by that person under statutory authority, the value of the consideration for the land being so acquired shall be reduced by an amount equal to the proceeds of sale reasonably attributable to the land that was so taken or sold. 1974, c. 93, s. 7 (3), *part*.

Reduction of consideration on lessee acquiring freehold

(6) Where a person entitled to the leasehold interest in land acquires the freehold interest therein, the value of the consideration for the conveyance to that person of the freehold interest may be reduced by the amount of the value of the consideration for the conveyance by which such person acquired his leasehold interest in the land if the value of that consideration was determined under subclause 1 (1) (p) (iii) and if tax was computed and paid with respect to the value of that consideration so determined, but the reduction shall not exceed the value of the consideration for the conveyance of the freehold interest. 1977, c. 14, s. 7 (2), *part*; 1979, c. 26, s. 3.

(7) For the purposes of clause (1) (b), farming shall not be considered to be an active commercial or industrial business. ^{Interpre-}
1977, c. 14, s. 7 (2), *part*.

(8) Every person who, knowing it to be false, makes an affidavit described in subsection (4), is guilty of an offence and on conviction is liable to a fine of not less than the amount of the tax that, had the true facts been stated, would have been payable, plus an amount of not less than \$50 and not more than \$1,000. 1974, c. 93, s. 7 (3), *part*. ^{Offence}

17. Where it is established to the satisfaction of the Minister that, prior to the 10th day of April, 1974, there existed, ^{When tax}
^{under s. 2 (2)}
^{not to apply}

- (a) a written agreement conveying, or providing for the conveyance of, land either at a definite price or consideration the amount or value of which is set out in the agreement or at a price or consideration the amount or value of which is determinable under the agreement by reference only to a valuation as of a date not later than the 9th day of April, 1974; or
- (b) a conveyance that was fully executed and was irrevocably and unconditionally delivered to the transferee or to some person on behalf of the transferee,

the person tendering for registration after the 9th day of April, 1974 a conveyance that is, or is provided for in, an agreement described in clause (a), or that is a conveyance described in clause (b), is, notwithstanding that such conveyance is to or in trust for a non-resident person, liable to pay tax under this Act only at the rates provided for in subsection 2 (1). 1974, c. 16, s. 1.

18.—(1) The Minister may make regulations prescribing any form required by this Act or that, in his opinion, will assist in the administration of this Act, and prescribing how and by whom any prescribed form shall be completed and what information it shall contain. ^{Regula-}
^{tions}

(2) The Lieutenant Governor in Council may make regula- ^{Idem}
tions,

- (a) exempting from tax any person tendering for registration any class of conveyance to which it is determined that this Act was not intended to apply,

or any conveyance to persons prescribed for the purpose of this clause;

- (b) providing for the collection of tax, the appointment of persons other than collectors to collect the tax, and establishing procedures for the collection of the tax;
- (c) providing for the refund of tax in whole or in part owing to special circumstances, and prescribing the terms and conditions under which such refund may be made;
- (d) authorizing or requiring the Deputy Minister of Revenue or any officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Minister by this Act;
- (e) providing for the method of calculating and ascertaining the value of the consideration in any case or class of cases;
- (f) authorizing any person or persons, on such conditions and subject to such rules as may be specified, to exempt from the tax or any part thereof imposed by subsection 2 (2), or to refund such tax or any part thereof to, any person tendering for registration any class of conveyance to which it is determined that this Act was not intended to apply, or any conveyance to any non-resident person;
- (g) providing for the payment of interest on any refund or rebate of tax authorized by this Act or the regulations, and prescribing the rate of such interest and the method by which it is to be calculated;
- (h) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Idem

(3) A regulation is, if it so provides, effective with reference to a period before it was filed. 1974, c. 8, s. 18.

CHAPTER 232

Landlord and Tenant Act

1. In this Act,

Interpre-
tation

- (a) "crops" means all sorts of grain, grass, hay, hops, fruits, pulse and other products of the soil;
- (b) "landlord" includes lessor, owner, the person giving or permitting the occupation of the premises in question, and his and their heirs and assigns and legal representatives, and in Parts II and III also includes the person entitled to possession of the premises;
- (c) "residential premises" means,
 - (i) any premises used or intended for use for residential purposes, and
 - (ii) land intended and used as a site for a mobile home used for residential purposes, whether or not the landlord also supplies the mobile home,but does not include,
 - (iii) premises occupied for business purposes with living accommodation attached under a single lease unless the tenant occupying the living accommodation is a person other than the person occupying the premises for business purposes, in which case the living accommodation shall be deemed residential premises, or
 - (iv) such other class or classes of accommodation as may be designated by the regulations;
- (d) "standing crops" means crops standing or growing on the demised premises;

- (e) "tenant" includes lessee, occupant, sub-tenant, under-tenant, and his and their assigns and legal representatives. R.S.O. 1970, c. 236, s. 1; 1975 (2nd Sess.), c. 13, s. 1.

Application

2. The provisions of Parts I, II and III of this Act in so far as they apply to tenancies of residential premises are subject to Part IV. R.S.O. 1970, c. 236, s. 2.

PART I

Relation of
landlord
and tenant

3. The relation of landlord and tenant does not depend on tenure, and a reversion in the lessor is not necessary in order to create the relation of landlord and tenant, or to make applicable the incidents by law belonging to that relation; nor is it necessary, in order to give a landlord the right of distress, that there is an agreement for that purpose between the parties. R.S.O. 1970, c. 236, s. 3.

Remedies
available to
assignees of
reversion

4. All persons being grantees or assignees of the Queen, or of any person other than the Queen, and the heirs, executors, successors and assigns of every of them, shall have and enjoy like advantage against the lessees, their executors, administrators, and assigns, by entry for non-payment of the rent, or for doing of waste, or other forfeiture, and also shall have and enjoy all and every such like and the same advantage, benefit, and remedies, by action only, for the non-performance of other conditions, covenants, or agreements, contained and expressed in the indentures of their said leases, demises or grants against all and every of the said lessees and grantees, their executors, administrators, and assigns as the said lessors or grantors themselves, or their heirs or successors, might have had and enjoyed at any time or times. R.S.O. 1970, c. 236, s. 4.

Lessee's
covenant to
run with
reversion

5. Rent reserved by a lease and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained shall be annexed and incident to and shall go with the reversionary estate in the land or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and shall be capable of being recovered, received, enforced and taken advantage of by any person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased. R.S.O. 1970, c. 236, s. 5.

Grantee of
reversion
may enforce
covenants

6. The benefit of every condition of re-entry or forfeiture for a breach of any covenant or condition contained in a lease shall extend to and be enforced and taken advantage of by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case

may require, of the land leased, although that person became, by conveyance or otherwise, so entitled after the condition of re-entry or forfeiture had become enforceable. R.S.O. 1970, c. 236, s. 6.

7. All lessees and grantees of lands, tenements, rents, portions, or any other hereditaments for term of years, life or lives, their executors, administrators, and assigns shall and may have like action, advantage, and remedy against all and every person who shall have any gift or grant of the Queen, or of any other persons, of the reversion of the same lands, tenements and other hereditaments so let, or any parcel thereof, for any condition, covenant, or agreement, contained or expressed in the indentures of their leases as the same lessees or any of them, might and should have had against their said lessors, and grantors, their heirs, or successors. R.S.O. 1970, c. 236, s. 7.

Action of
covenant,
etc., against
assigns of
grantors
and lessors

8. The obligation of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise, and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, such obligation may be taken advantage of and enforced against any person so entitled. R.S.O. 1970, c. 236, s. 8.

Lessor's
covenants
to run with
reversion

9. Notwithstanding the severance by conveyance, surrender or otherwise, of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry and every other condition contained in the lease shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in any land which has not been surrendered, or as to which the term has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease. R.S.O. 1970, c. 236, s. 9.

Apportion-
ment of
conditions
on severance,
etc.

On sub-
demise title
to leasehold
reversion
not to be
required

10.—(1) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee does not have the right to call for the title to that reversion.

Saving

(2) This section applies only if and as far as the contrary intention is not expressed in the contract, and has effect subject to the terms of the contract and to the provisions therein contained. R.S.O. 1970, c. 236, s. 10.

Effect of
lease where
there is a
deviation
from terms
of the power
to demise

11. Where, in the intended exercise of any power of leasing, whether derived under a statute or under an instrument lawfully creating such power, a lease has been, or is hereafter granted that is, by reason of the non-observance or omission of some condition or restriction or by reason of any other deviation from the terms of such power, invalid as against the person entitled, after the determination of the interest of the person granting such lease, to the reversion, or against other the person who, subject to any lease lawfully granted under such power, would have been entitled to the land comprised in such lease, such lease, in case it was made in good faith and the lessee named therein, his heirs, executors, administrators, or assigns have entered thereunder, shall be considered a contract for a grant at the request of the lessee, his heirs, executors, administrators, or assigns of a valid lease under such power, to the like purport and effect as such invalid lease, except so far as any variation may be necessary in order to comply with the terms of such power, and all persons who would have been bound by a lease lawfully granted under such power are bound by such contract; but no lessee under any such invalid lease, his heirs, executors, administrators, or assigns, are entitled by virtue of any such contract to obtain any variation of the lease, where the persons who would have been bound by the contract are willing to confirm the lease without variation. R.S.O. 1970, c. 236, s. 11.

What may
be deemed a
confirmation
of invalid
lease

12. Where, upon or before the acceptance of rent under any such invalid lease, any receipt, memorandum or note in writing confirming the lease is signed by the person accepting the rent, or some other person by him thereunto lawfully authorized, such acceptance shall, as against the person so accepting the rent, be deemed a confirmation of the lease. R.S.O. 1970, c. 236, s. 12.

Duty of
lessee to
accept con-
firmation

13. Where, during the continuance of the possession taken under any such invalid lease, the person for the time being entitled, subject to such possession, to the land comprised in the lease, or to the possession or the receipt of the rents and profits thereof, is able to confirm the lease without

variation, the lessee, his heirs, executors, or administrators, or any person who would have been bound by the lease if it had been valid, upon the request of the person so able to confirm it, is bound to accept a confirmation accordingly, and the confirmation may be by memorandum or note in writing signed by the persons confirming and accepting or by some other persons by them thereunto lawfully authorized, and, after confirmation and acceptance of confirmation, the lease is valid and shall be deemed to have had from the granting thereof the same effect as if it had been originally valid. R.S.O. 1970, c. 236, s. 13.

14. Where a lease granted in the intended exercise of a power of leasing is invalid by reason that, at the time of granting the lease, the person granting the lease could not lawfully grant the lease, but the estate of such person in the land comprised in the lease has continued after the time when the lease, or the like lease, might have been granted by him in the lawful exercise of such power, the lease takes effect and is as valid as if it had been granted at such last mentioned time, and all the provisions of sections 11 to 16 apply to every such lease. R.S.O. 1970, c. 236, s. 14.

Effect of
invalid
leases if
grantor
continues in
ownership
until he
might
lawfully
grant
the lease

15. Where a valid power of leasing is vested in, or may be exercised by, a person granting a lease, and, by reason of the determination of the estate or interest of such person or otherwise, the lease cannot have effect and continuance according to the terms thereof independently of such power, the lease shall for the purposes of sections 11 to 14 be deemed to be granted in the intended exercise of such power although such power is not referred to in the lease. R.S.O. 1970, c. 236, s. 15.

What shall
be deemed
an intended
exercise of
a power

16. Nothing in sections 11 to 15 extends to, prejudices or takes away any right of action, or other right or remedy to which, but for sections 11 to 15, the lessee named in any such lease, his heirs, executors, administrators or assigns would or might have been entitled under or by virtue of any covenant for title or quiet enjoyment contained in the lease on the part of the person granting the lease, or prejudices or takes away any right of re-entry or other right or remedy to which, but for such sections, the person granting the lease, his heirs, executors, administrators or assigns, or other person, for the time being entitled to the reversion expectant on the determination of the lease, would or might have been entitled for or by reason of any breach of the covenants, conditions, or provisos contained in the lease, and on the part of the lessee, his heirs, executors, administrators or assigns to be observed and performed. R.S.O. 1970, c. 236, s. 16.

Saving the
rights of the
lessees under
certain
covenants
and the
lessor's
right
of re-entry

Effect of
surrender or
merger of
reversion
expectant
in certain
cases

17. Where the reversion expectant on a lease of land merges or is surrendered, the estate which for the time being confers as against the tenant under the lease the next vested right to the land shall, to the extent of and for preserving such incidents to and obligations on the reversion as but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the lease. R.S.O. 1970, c. 236, s. 17.

Right of
re-entry on
non-payment
of rent

18.—(1) In every demise, whether by parol or in writing and whenever made, unless it is otherwise agreed, there shall be deemed to be included an agreement that if the rent reserved, or any part thereof, remains unpaid for fifteen days after any of the days on which it ought to have been paid, although no formal demand thereof has been made, it is lawful for the landlord at any time thereafter to re-enter into and upon the demised premises or any part thereof in the name of the whole and to have again, repossess and enjoy the same as of his former estate. R.S.O. 1970, c. 236, s. 18 (1).

Implied
agreement
for re-entry
on conviction
of tenant for
keeping
disorderly
house or
carrying on
any trade,
etc., without
a required
licence

R.S.C. 1970,
c. C-34

R.S.O. 1980,
c. 302

(2) In every such demise there shall be deemed to be included an agreement that if the tenant or any other person is convicted of keeping a disorderly house within the meaning of the *Criminal Code* (Canada) on the demised premises or any part thereof, or carries on or engages in, on the demised premises or any part thereof, any trade, calling, business or occupation for which a licence is required under a by-law passed under section 221 or 222 of the *Municipal Act* for licensing, regulating or governing such trade, calling, business or occupation, except under the authority of a licence issued under such by-law, it is lawful for the landlord at any time thereafter to re-enter into the demised premises or any part thereof and to have again, repossess and enjoy the same as of his former estate. R.S.O. 1970, c. 236, s. 18 (2); 1978, c. 18, s. 1.

Interpre-
tation

19.—(1) In this section and in sections 20 to 23,

- (a) "action" includes any proceedings under Part III;
- (b) "lease" includes an original or derivative under-lease and a grant at a fee farm rent or securing a rent by condition and an agreement for a lease where a lessee has become entitled to have his lease granted;
- (c) "lessee" includes an original or derivative under-lessee and the heirs, executors, administrators and assigns of a lessee and a grantee under such a grant and his heirs and assigns;
- (d) "lessor" includes an original derivative under-lessor and the heirs, executors, administrators and assigns of a lessor and a grantor under such a grant and his heirs and assigns;

- (e) "mining lease" means a lease for mining purposes, that is a searching for, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away or disposing of mines or minerals, and substances in, on or under the land, obtainable by underground or by surface working or purposes connected therewith, and includes a grant or licence for mining purposes;
- (f) "under-lease" includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted;
- (g) "under-lessee" includes any person deriving title under or from an under-lessee.

(2) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease, other than a proviso in respect of the payment of rent, is not enforceable by action, entry, or otherwise, unless the lessor serves on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails within a reasonable time thereafter to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach. R.S.O. 1970, c. 236, s. 19.

20.—(1) Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture, whether for non-payment of rent or for other cause, the lessee may, in the lessor's action, if any, or if there is no such action pending, then in an action or summary application to a judge of the Supreme Court brought by himself, apply to the court for relief, and the court may grant such relief as, having regard to the proceedings and conduct of the parties under section 19 and to all the other circumstances, the court thinks fit, and on such terms as to payment of rent, costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future as the court considers just.

(2) This section and section 19 apply, although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of a statute.

(3) For the purposes of this section, a lease limited to continue only as long as the lessee abstains from committing

a breach of covenant is and takes effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

When
proceedings
may be
stayed

(4) Where the action is brought to enforce a right of re-entry or forfeiture for non-payment of rent and the lessee, at any time before judgment, pays into court all the rent in arrear and the costs of the action, the proceedings in the action are forever stayed.

Position of
lessee

(5) Where relief is granted under this section, the lessee shall hold and enjoy the demised premises according to the lease thereof made without any new lease.

Application
of section

(6) This section applies to leases made either before or after the commencement of this Act and applies notwithstanding any stipulation to the contrary.

Exceptions

(7) This section does not extend,

(a) to a covenant or condition against the assigning, underletting, parting with the possession, or disposing of the land leased; or to a condition for forfeiture on the bankruptcy of the lessee, or on the lessee making an assignment for the benefit of creditors under the *Assignments and Preferences Act*, or on the taking in execution of the lessee's interest; or

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c. 33

(b) in the case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

Condition
for relief
for non-
insurance

(8) Where the right of re-entry or forfeiture is in respect of a breach of a covenant or condition to insure, relief shall not be granted if at the time of the application for relief there is not an insurance on foot in conformity with the covenant or condition to insure except, in addition to any other terms that the court may impose, upon the term that the insurance is effected. R.S.O. 1970, c. 236, s. 20.

Protection
of under-
lessees on
forfeiture of
superior
lease

21. Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso or stipulation in a lease, the court, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action, if any, or in any action or summary application to a judge of the Supreme Court brought by such person for that purpose, may make an order

vesting for the whole term of the lease or any less term the property comprised in the lease, or any part thereof, in any person entitled as under-lessee to any estate or interest in such property upon such conditions as to execution of any deed or other document, payment of rents, costs, expenses, damages, compensation, giving security or otherwise as the court in the circumstances of each case thinks fit; but in no case is any such under-lessee entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease. R.S.O. 1970, c. 236, s. 21.

22. Where a lessor is proceeding by action to enforce a right of re-entry or forfeiture under a covenant, proviso or stipulation in a lease, every person claiming any right, title or interest in the demised premises under the lease, if it is known to the lessor that he claims such right or interest or if the instrument under which he claims is registered in the proper land registry office, shall be made a party to the action. R.S.O. 1970, c. 236, s. 22.

Who must be parties to an action to enforce right of re-entry or forfeiture

23.—(1) In every lease made after the 1st day of September, 1911, containing a covenant, condition or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that such licence or consent is not to be unreasonably withheld.

Licence to assign not to be unreasonably withheld

(2) Where the landlord refuses or neglects to give a licence or consent to an assignment or sub-lease, a judge of the county or district court, upon the application of the tenant or of the assignee or sub-tenant, made by way of originating notice according to the practice of the court, may make an order determining whether or not the licence or consent is unreasonably withheld and, where the judge is of opinion that the licence or consent is unreasonably withheld, permitting the assignment or sub-lease to be made, and such order is the equivalent of the licence or consent of the landlord within the meaning of any covenant or condition requiring the same and such assignment or sub-lease is not a breach thereof. R.S.O. 1970, c. 236, s. 23.

Application to court where consent to assignment or sub-letting withheld

24. Where a licence to do any act that, without such licence, would create a forfeiture, or give a right to re-enter under a condition or power reserved in a lease, is given to a lessee or his assigns, every such licence, unless otherwise expressed, extends only to the permission actually given, or to any specific breach of any proviso or covenant, or to the actual assignment, under-lease or other matter thereby

Restriction of effect of licence under power contained in lease, etc.

specifically authorized to be done, but does not prevent a proceeding for any subsequent breach unless otherwise specified in the licence, and all rights under covenants and powers of forfeiture and re-entry in the lease remain in full force and virtue, and are available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorized or made dispunishable by such licence, in the same manner as if no such licence had been given, and the condition or right of re-entry remains in all respects as if the licence had not been given, except in respect of the particular matter authorized to be done. R.S.O. 1970, c. 236, s. 24.

Restricted
operation
of partial
licences

25. Where in a lease there is a power or condition of re-entry on assigning or underletting or doing any other specified act without licence, and a licence has been or is given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without licence, or has been or is given to a lessee or owner, or any one of several lessees or owners, to assign or underlet part only of the property, or to do any other such act in respect of part only of the property, the licence does not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees or owner or owners of the other shares or interest in the property, or by the lessee or owner of the rest of the property, over or in respect of such shares or interest or remaining property, but such right of re-entry remains in full force over or in respect of the shares or interests or property not the subject of the licence. R.S.O. 1970, c. 236, s. 25.

Restriction
of effect of
waiver of
covenant

26. Where an actual waiver of the benefit of a covenant or condition in a lease, on the part of a lessor or his heirs, executors, administrators or assigns, is proved to have taken place in any one particular instance, such actual waiver shall not be assumed or deemed to extend to any instance or any breach of covenant or condition other than that to which the waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition unless an intention to that effect appears. R.S.O. 1970, c. 236, s. 26.

Covenant to
pay taxes
not to
include taxes
for local
improve-
ments

27.—(1) Unless it is otherwise specifically provided in a lease made after the 1st day of September, 1897, a covenant by a lessee for payment of taxes shall not be deemed to include an obligation to pay taxes assessed for local improvements.

Effect of
altering
form of
covenant

R.S.O. 1980,
c. 473

(2) In the case of a lease made under the *Short Forms of Leases Act* where the words "except for local improvements" are struck out or omitted from the covenant number 3 in

Schedule B of that Act, such striking out or omission shall be deemed to be a specific provision otherwise made within the meaning of subsection (1). R.S.O. 1970, c. 236, s. 27.

28. A week's notice to quit and a month's notice to quit, respectively, ending with the week or the month, is sufficient notice to determine, respectively, a weekly or monthly tenancy. R.S.O. 1970, c. 236, s. 28.

Notice to quit in case of weekly or monthly tenancies

29. Every tenant to whom a writ in an action for the recovery of land has been delivered, or to whose knowledge it comes, shall forthwith give notice thereof to his landlord, or to his landlord's bailiff or receiver, and, if he omits so to do, he is answerable to his landlord for all damages sustained by him by reason of the failure to give such notice. R.S.O. 1970, c. 236, s. 29.

Penalty on tenant receiving writ for recovery of land and not notifying his landlord

30.—(1) The goods and chattels exempt from seizure under execution are not liable to seizure by distress by a landlord for rent, except as hereinafter provided.

Exemption of goods

(2) In the case of a monthly tenancy, the exemption only applies to two months arrears of rent.

Monthly tenancies

(3) The person claiming the exemption shall select and point out the goods and chattels that he claims to be exempt. R.S.O. 1970, c. 236, s. 30.

Selection of exempted goods

31.—(1) In this section, subject to section 32, "tenant" includes a sub-tenant and the assigns of the tenant and any person in actual occupation of the premises under or with the assent of the tenant during the currency of the lease, or while the rent is due or in arrear, whether or not he has attorned to or become the tenant of the landlord.

Interpretation

(2) A landlord shall not distrain for rent on the goods and chattels of any person except the tenant or person who is liable for the rent, although the same are found on the premises; but this restriction does not apply in favour of a person claiming title under an execution against the tenant, or in favour of a person whose title is derived by purchase, gift, transfer, or assignment from the tenant, whether absolute or in trust, or by way of mortgage or otherwise, nor to the interest of the tenant in any goods or chattels on the premises in the possession of the tenant under a contract for purchase, or by which he may or is to become the owner thereof upon performance of any condition, nor where goods or chattels have been exchanged between tenants or persons by the one borrowing or hiring from the other for the purpose of defeating the claim of or the right of distress by the

Goods on premises not property of tenant to be exempt

landlord, nor does the restriction apply where the property is claimed by the wife, husband, daughter, son, daughter-in-law, or son-in-law of the tenant, or by any other relative of his, if such other relative lives on the premises as a member of the tenant's family, or by any person whose title is derived by purchase, gift, transfer or assignment from any relative to whom the restriction does not apply.

Goods in
store
managed by
agent who
is in default

(3) Nothing in this section exempts from distress goods or chattels in a store or shop managed or controlled by an agent or clerk for the owner of the goods or chattels where the clerk or agent is also the tenant and in default, and the rent is due in respect of the store or shop or premises rented therewith and thereto belonging, if the goods or chattels would have been liable to seizure but for this Act. R.S.O. 1970, c. 236, s. 31.

Interpre-
tation

32.—(1) In this section, “under-tenant” means a tenant to whom the premises or some part of the premises in respect of which rent is distrained for have been sub-let with the consent of the superior landlord or in default of such consent under the order of the judge of the county or district court as provided by subsection 23 (2).

Declaration
by boarder,
under-
tenant, or
lodger that
immediate
tenant has
no property
in goods
distrained

(2) If a superior landlord distrains or threatens to distrain any goods or chattels of an under-tenant, boarder or lodger for arrears of rent due to him by his immediate tenant, the under-tenant, boarder or lodger may serve the superior landlord, or the bailiff or other person employed by him to levy the distress, with a statutory declaration made by the under-tenant, boarder or lodger setting forth that the immediate tenant has no right of property or beneficial interest in such goods or chattels, and that they are the property or in the lawful possession of the under-tenant, boarder or lodger, and also setting forth whether any and what amount by way of rent, board or otherwise is due from the under-tenant, boarder or lodger to the immediate tenant, and to the declaration shall be annexed a correct inventory, subscribed by the under-tenant, boarder or lodger, of the goods and chattels mentioned in the declaration, and the under-tenant, boarder or lodger may pay to the superior landlord, or to the bailiff or other person employed by him, the amount if any, so due, or so much thereof as is sufficient to discharge the claim of the superior landlord.

Penalty for
improper
levy

(3) If the superior landlord, bailiff or other person, after being served with the declaration and inventory, and after the under-tenant, boarder or lodger has paid or tendered to him the amount, if any, which by subsection (2) the under-tenant, boarder or lodger is authorized to pay, levies or proceeds

with a distress on the goods or chattels of the under-tenant, boarder or lodger, the superior landlord, bailiff or other person is guilty of an illegal distress, and the under-tenant, boarder or lodger may replevy the goods or chattels in any court of competent jurisdiction, and the superior landlord is also liable to an action, at the suit of the under-tenant, boarder or lodger, in which the truth of the declaration and inventory may be inquired into.

(4) Any payment made by an under-tenant, boarder or lodger pursuant to subsection (2) is a valid payment on account of the amount due from him to the immediate tenant. Effect of payments by under-tenant, boarder or lodger
R.S.O. 1970, c. 236, s. 32.

33.—(1) A tenant in default for non-payment of rent is not entitled to the benefit of the exemption provided for by section 30 unless he gives up possession of the premises forthwith or is ready and offers to do so. Duty of tenant claiming exemption to surrender premises

(2) The offer may be made to the landlord or to his agent, and the person authorized to seize and sell the goods and chattels, or having the custody of them for the landlord, shall be considered an agent of the landlord for the purpose of the offer and surrender to the landlord of possession. To whom offer of surrender to be made
R.S.O. 1970, c. 236, s. 33.

34.—(1) Where a landlord desires to seize exempted goods, he shall, after default has been made in the payment of rent and before or at the time of seizure, serve the tenant with a notice (Form 1). Seizure of exempted goods

(2) The surrender of possession in pursuance of the notice is a determination of the tenancy. R.S.O. 1970, c. 236, s. 34. Effect of surrender of possession

35.—(1) A tenant may set off against the rent due a debt due to him by the landlord. Right of set off

(2) Notice of the claim of set off (Form 2) may be given before or after the seizure. Notice

(3) When the notice is given, the landlord is entitled to distrain, or to proceed with the distress, only for the balance of the rent after deducting any debt justly due by him to the tenant that is mentioned in the notice. R.S.O. 1970, c. 236, s. 35. Effect of notice

36.—(1) Service of notices under sections 28, 34 and 35 shall be made either personally or by leaving the same with a grown-up person in and apparently residing on the premises occupied by the person to be served. Service of notices

Posting up
notice in
lieu of
service

(2) If the tenant cannot be found and his place of abode is not known, or admission thereto cannot be obtained, the posting up of the notice on some conspicuous part of the premises is good service. R.S.O. 1970, c. 236, s. 36.

Formal
defects not
to invalidate

37. No proceeding under sections 33 to 36 shall be rendered invalid by any defect in form. R.S.O. 1970, c. 236, s. 37.

Lien of
landlord in
bankruptcy,
etc.

38.—(1) In case of an assignment for the general benefit of creditors, or an order being made for the winding up of an incorporated company, or where a receiving order in bankruptcy or authorized assignment has been made by or against a tenant, the preferential lien of the landlord for rent is restricted to the arrears of rent due during the period of three months next preceding, and for three months following the execution of the assignment, and from thence so long as the assignee retains possession of the premises, but any payment to be made to the landlord in respect of accelerated rent shall be credited against the amount payable by the assignee, liquidator or trustee for the period of his occupation.

Rights of
assignee

(2) Notwithstanding any provision, stipulation or agreement in any lease or agreement or the legal effect thereof, in case of an assignment for the general benefit of creditors, or an order being made for the winding up of an incorporated company, or where a receiving order in bankruptcy or authorized assignment has been made by or against a tenant, the assignee, liquidator or trustee may at any time within three months thereafter for the purposes of the trust estate and before he has given notice of intention to surrender possession or disclaim, by notice in writing elect to retain the leased premises for the whole or any portion of the unexpired term and any renewal thereof, upon the terms of the lease and subject to the payment of the rent as provided by the lease or agreement, and he may, upon payment to the landlord of all arrears of rent, assign the lease with rights of renewal, if any, to any person who will covenant to observe and perform its terms and agree to conduct upon the demised premises a trade or business which is not reasonably of a more objectionable or hazardous nature than that which was thereon conducted by the debtor, and who on application of the assignee, liquidator or trustee, is approved by a judge of the Supreme Court as a person fit and proper to be put in possession of the leased premises. R.S.O. 1970, c. 236, s. 38.

Election to
surrender

39.—(1) The assignee, liquidator or trustee has the further right, at any time before so electing, by notice in writing to the landlord, to surrender possession or disclaim any such lease, and his entry into possession of the leased premises and their occupation by him, while required for the purposes

of the trust estate, shall not be deemed to be evidence of an intention on his part to elect to retain possession pursuant to section 38.

(2) Where the assignor, or person or firm against whom a receiving order has been made in bankruptcy, or a winding up order has been made, being a lessee, has, before the making of the assignment or such order demised any premises by way of under-lease, approved or consented to in writing by the landlord, and the assignee, liquidator or trustee surrenders, disclaims or elects to assign the lease, the under-lessee, if he so elects in writing within three months of such assignment or order, stands in the same position with the landlord as though he were a direct lessee from the landlord but subject, except as to rental payable, to the same liabilities and obligations as the assignor, bankrupt or insolvent company was subject to under the lease at the date of the assignment or order, but the under-lessee shall in such event be required to covenant to pay to the landlord a rental not less than that payable by the under-lessee to the debtor, and if such last mentioned rental was greater than that payable by the debtor to the said landlord, the under-lessee shall be required to covenant to pay to the landlord the like greater rental.

Rights of
sub-tenants

(3) In the event of any dispute arising under this section or section 38, the dispute shall be disposed of by a judge of the Supreme Court upon a summary application. R.S.O. 1970, c. 236, s. 39.

Settlement
of disputes

40. Every person has the like remedy by distress and by impounding and selling the property distrained in cases of rents seck as in case of rent reserved upon lease. R.S.O. 1970, c. 236, s. 40.

Distress for
rents seck

41. A person having any rent due and in arrear, upon any lease for life or lives or for years, or at will, ended or determined, may distrain for such arrears, after the determination of the lease, in the same manner as he might have done if the lease had not been ended or determined, if the distress is made within six months after the determination of the lease, and during the continuance of the landlord's title or interest, and during the possession of the tenant from whom the arrears became due. R.S.O. 1970, c. 236, s. 41.

Distress for
arrears on
leases
determined

42. A person entitled to any rent or land for the life of another may recover by action or distress the rent due and owing at the time of the death of the person for whose life such rent or land depended as he might have done if the person by whose death the estate in such rent or land determined had continued in life. R.S.O. 1970, c. 236, s. 42.

Right of
persons
entitled to
rent during
life of
another to
recover
same after
death

Distress to be
reasonable

43. Distress shall be reasonable. R.S.O. 1970, c. 236, s. 43.

Right to
distrain
grain, etc.,

44. A person having rent due and in arrear upon any demise, lease, or contract may seize and secure any sheaves or cocks of grain, or grain loose, or in the straw, or hay, lying or being in any barn or granary or otherwise upon any part of the land charged with such rent, and may lock up or detain the same in the place where the same is found, for or in the nature of a distress until the same is replevied, and in default of the same being replevied, may sell the same after appraisement thereof is made; but such grain or hay so distrained shall not be removed by the person distraining, to the damage of the owner thereof out of the place where the same is found and seized, but shall be kept there, as impounded, until it is replevied or sold in default of replevying. R.S.O. 1970, c. 236, s. 44.

Right to
distrain
cattle or
live stock

45.—(1) A landlord may take and seize, as a distress for arrears of rent, any cattle or live stock of his tenant feeding or pasturing upon any highway, or on any way belonging to the demised premises or any part thereof.

Distress of
standing
crops

(2) Subject to subsection (4), a landlord may take and seize standing crops as a distress for arrears of rent, and may cut, gather, make, cure, carry and lay up the same, when ripe, in the barns or other proper place on the demised premises and, if there is no barn or proper place on the demised premises, then in any other barn or proper place which the landlord hires or otherwise procures for that purpose as near as may be to the premises, and may in convenient time appraise, sell or otherwise dispose of the same towards satisfaction for the rent for which the distress is made, and of the charges of the distress, appraisement and sale in the same manner as other goods and chattels may be seized, distrained and disposed of, and the appraisement thereof shall be taken when cut, gathered, cured and made and not before.

Tenant's
right to
notice of
place of
keeping

(3) Notice of the place where the goods and chattels so distrained are lodged or deposited shall, within one week after the lodging or depositing thereof, be given to the tenant or left at his last place of abode.

Satisfying
distress of
standing
crops

(4) If, after a distress of standing crops so taken for arrears of rent, and at any time before the same are ripe and cut, cured or gathered, the tenant pays to the landlord for whom the distress is taken the whole rent then in arrear, with the full costs and charges of making the distress and occasioned thereby, then, upon such payment or lawful tender thereof, the same and every part thereof shall cease, and the standing crops so distrained shall be delivered up to the tenant.

(5) Where standing crops are distrained for rent they may, at the option of the landlord, be advertised and sold in the same manner as other goods, and it is not necessary for the landlord to reap, thresh, gather or otherwise market them. Sale of standing crop

(6) Any person purchasing standing crops at such sale is liable for the rent of the land upon which they are standing at the time of the sale, and until they are removed, unless the rent has been paid or has been collected by the landlord, or has been otherwise satisfied, and the rent shall, as nearly as may be, be the same as that which the tenant whose goods were sold was to pay, having regard to the quantity of land, and to the time during which the purchaser occupies it. R.S.O. 1970, c. 236, s. 45. Liability of purchaser of standing crops

46. Beasts that gain the land and sheep shall not be distrained if there are other chattels sufficient to satisfy the demand. R.S.O. 1970, c. 236, s. 46. Conditional exemption of certain beasts

WHERE DISTRESS MAY BE TAKEN

47. Save as herein otherwise provided, goods or chattels that are not at the time of the distress upon the premises in respect of which the rent distrained for is due, shall not be distrained for rent. R.S.O. 1970, c. 236, s. 47. Chattels not to be distrained off the premises

FRAUDULENT REMOVAL

48.—(1) Where any tenant, for life or lives, term of years, at will, sufferance or otherwise, of any messuages, lands, tenements or hereditaments, upon the demise or holding whereof any rent is reserved, due, or made payable, fraudulently or clandestinely conveys away, or carries off or from the premises his goods or chattels to prevent the landlord from distraining them for arrears of rent so reserved, due, or made payable, the landlord or any person by him for that purpose lawfully empowered, may, within thirty days next ensuing such conveying away or carrying off, take and seize such goods and chattels wherever they are found, as a distress for such arrears of rent, and sell or otherwise dispose of them in such manner as if they had actually been distrained by the landlord upon such premises for such arrears of rent. Landlords may distrain goods fraudulently carried off the premises

(2) No landlord or other person entitled to such arrears of rent shall take or seize, as a distress for the same, any such goods or chattels that have been sold in good faith and for a valuable consideration, before such seizure made, to any person not privy to such fraud. R.S.O. 1970, c. 236, s. 48. Exception

49. Where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant, his servant, or agent, or other person aiding or assisting therein, Right of landlord to break open houses where goods fraudulently secured

are or are believed to be in any house, barn, stable, outhouse, yard, close or place, locked up, fastened or otherwise secured so as to prevent them from being taken and seized as a distress for arrears of rent, the landlord or his agent may take and seize, as a distress for rent, such goods and chattels, first calling to his assistance a peace officer who is hereby required to aid and assist therein, and, in case of a dwelling house, oath being also first made of a reasonable ground to believe that such goods or chattels are therein, and, in the daytime, break open and enter into such house, barn, stable, outhouse, yard, close or place and take and seize such goods and chattels for the arrears of rent as he might have done if they were in an open field or place upon the premises from which they were so conveyed or carried away. R.S.O. 1970, c. 236, s. 49.

Penalty for fraudulently removing, or assisting to remove, goods

50. If a tenant so fraudulently removes, conveys away or carries off his goods or chattels, or if any person wilfully and knowingly aids or assists him in so doing, or in concealing them, every person so offending shall forfeit and pay to the landlord double the value of such goods or chattels, to be recovered by action in any court of competent jurisdiction. R.S.O. 1970, c. 236, s. 50.

Beasts distrained not to be driven out of the municipality

51.—(1) Beasts or cattle distrained shall not be removed or driven out of the city, town, village or township in which they were distrained, except to a fitting pound or enclosure in the same county or district not more than three miles distant from the place where the distress was taken.

Impounding

(2) No cattle or other goods or chattels distrained or taken by way of distress for any cause at one time shall be impounded in several places.

Penalty

(3) Every person contravening this section shall forfeit to the person aggrieved \$20 in addition to the damages sustained by him.

Where goods may be impounded

(4) Any person lawfully taking any distress for any kind of rent may impound or otherwise secure the distress so made in such place or on such part of the premises chargeable with the rent as is most fit and convenient for that purpose, and may appraise, sell and dispose of the same upon the premises, and it is lawful for any person to come and go to and from such place or part of the premises where any distress for rent is so impounded and secured to view, appraise and buy, and to carry off or remove the same on account of the purchaser thereof. R.S.O. 1970, c. 236, s. 51.

Pound breach or rescue

52. Upon any pound breach or rescue of goods or chattels distrained for rent, the person offending or the owner of the

goods distrained in case they are afterwards found to have come to his use or possession, shall forfeit to the person aggrieved \$20 in addition to the damages sustained by him. R.S.O. 1970, c. 236, s. 52.

53. Where any goods or chattels are distrained for any rent reserved and due upon any demise, lease or contract, and the tenant or owner of them does not, within five days next after such distress taken and notice thereof, with the cause of such taking, left at the dwelling house or other most conspicuous place on the premises charged with the rent distrained for, replevy the same, then, after the distress and notice and the expiration of such five days, the person distraining shall cause the goods and chattels so distrained to be appraised by two appraisers, who shall first be sworn to appraise them truly, according to the best of their understandings, a memorandum of which oath is to be endorsed on the inventory, and after such appraisalment the person so distraining may lawfully sell the goods and chattels so distrained for the best price that can be got for them towards satisfaction of the rent for which they were distrained and of the charges of the distress, appraisalment and sale, and shall hold the overplus, if any, for the owner's use and pay it over to him on demand. R.S.O. 1970, c. 236, s. 53.

Sale of
distress,
when it may
be made

54. Where a distress is made for any kind of rent justly due, and any irregularity or unlawful act is afterwards done by the person distraining, or by his agent, or if there has been an omission to make the appraisalment under oath,* the distress itself shall not be therefore deemed to be unlawful, nor the person making it be deemed a trespasser *ab initio*, but the person aggrieved by the unlawful act or irregularity may recover by action full satisfaction for the special damage sustained thereby. R.S.O. 1970, c. 236, s. 54.

Irregulari-
ties not to
make
distress void
ab initio

55.—(1) A distrainer who takes an excessive distress, or takes a distress wrongfully, is liable in damages to the owner of the goods or chattels distrained.

Wrongful
distress

(2) Where a distress and sale are made for rent pretended to be in arrear and due when, in truth, no rent is in arrear or due to the person distraining, or to the person in whose name or right such distress is taken, the owner of the goods or chattels distrained and sold, his executors or administrators are entitled, by action to be brought against the person so distraining, to recover full satisfaction for the damage sustained by the distress and sale. R.S.O. 1970, c. 236, s. 55.

Where no
rent due

Goods taken
in execution
not to be
removed till
rent paid

56.—(1) Goods or chattels lying or being in or upon any land leased for life or lives, or term of years, at will, or otherwise are not liable to be taken by virtue of any execution issued out of the Supreme Court or out of a county or district court on any pretence whatsoever, unless the party at whose suit the execution is sued out before the removal of such goods or chattels from the premises by virtue of such execution pays to the landlord or his bailiff all money due for rent of the premises at the time of the taking of such goods or chattels by virtue of such execution if the arrears of rent do not amount to more than one year's rent.

When
execution
may be
proceeded
with

(2) If such arrears exceed one year's rent, the party at whose suit such execution is sued out, on paying the landlord or his bailiff one year's rent, may proceed to execute his judgment.

What to be
paid to
execution
creditor

(3) The sheriff or other officer shall levy and pay to the execution creditor as well the money so paid for rent as the execution money. R.S.O. 1970, c. 236, s. 56.

Liability of
growing
crops seized
and sold
under
execution
for accruing
rent

57. Where all or any part of the standing crops of the tenant of any land is seized and sold by a sheriff or other officer by virtue of a writ of execution, such crops, so long as they remain on the land in default of sufficient distress of the goods and chattels of the tenant, are liable for the rent that may accrue and become due to the landlord after any such seizure and sale, and to the remedies by distress for recovery of such rent, and that notwithstanding any bargain and sale or assignment that may have been made or executed of such crops by any such sheriff or other officer. R.S.O. 1970, c. 236, s. 57.

Penalty of
double value
for over-
holding

58. Where a tenant for any term for life, lives or years, or other person who comes into possession of any land, by, from, or under, or by collusion with such tenant, wilfully holds over the land or any part thereof after the determination of the term, and after notice in writing given for delivering the possession thereof by his landlord or the person to whom the remainder or reversion of the land belongs or his agent thereunto lawfully authorized, the tenant or other person so holding over shall, for and during the time he so holds over or keeps the person entitled out of possession, pay to such person or his assigns at the rate of double the yearly value of the land so detained for so long as it is detained, to be recovered by action in any court of competent jurisdiction, against the recovering of which penalty there is no relief. R.S.O. 1970, c. 236, s. 58.

Penalty of
double rent
for over-
holding

59. Where a tenant gives notice of his intention to quit the premises by him held at a time mentioned in the notice

and does not accordingly deliver up the possession thereof at the time mentioned in the notice, the tenant shall from thenceforward pay to the landlord double the rent or sum that he should otherwise have paid, to be levied, sued for and recovered at the same times and in the same manner as the single rent or sum before the giving such notice could be levied, sued for or recovered, and such double rent or sum shall continue to be paid while the tenant continues in possession. R.S.O. 1970, c. 236, s. 59.

60. The executors or administrators of a landlord may distrain for the arrears of rent due to the landlord in his lifetime, and may sue for the same in like manner as the landlord might have done if living, and the powers and provisions contained in this Act relating to distresses for rent are applicable to the distresses so made. R.S.O. 1970, c. 236, s. 60.

Right of personal representatives to distrain for arrears

61. Every attornment of a tenant of any land to a stranger claiming title to the estate of his landlord is void, and the possession of his landlord shall not be deemed to be changed, altered or affected by any such attornment; but nothing herein vacates or affects any attornment made pursuant to and in consequence of a judgment or order of a court, or made with the privity and consent of the landlord, or to any mortgagee after the mortgage has become forfeited. R.S.O. 1970, c. 236, s. 61.

Nullity of attornment to stranger

62.—(1) Every grant or conveyance of any rent or of the reversion or remainder of any land is good and effectual without any attornment of the tenant of the land out of which such rent issues, or of the particular tenant upon whose particular estate any such reversion or remainder is expectant or depending.

Attornment of tenant, in what cases not necessary

(2) A tenant shall not be prejudiced or damaged by the payment of rent to any grantor or by breach of any condition for non-payment of rent before notice to him of such grant by the grantee. R.S.O. 1970, c. 236, s. 62.

Tenant not to be prejudiced

63.—(1) Where a lease is duly surrendered in order to be renewed and a new lease is made and executed by the chief landlord, the new lease is, without a surrender of all or any of the under-leases, as good and valid as if all the under-leases derived thereout had been likewise surrendered at or before the time of taking of such new lease.

Chief leases may be removed without surrendering all the under-leases

(2) Every person in whom any estate for life, or lives, or for years, is from time to time vested by virtue of such new lease is entitled to the rents, covenants and duties,

Rights and remedies of parties thereunder

and has like remedy for recovery thereof, and the under-lessees shall hold and enjoy the land in the respective under-leases comprised as if the original lease had been kept on foot and continued, and the chief landlord has and is entitled to such and the same remedy by distress or entry in and upon the land comprised in any such under-lease for the rents and duties reserved by the new lease, so far as they do not exceed the rents and duties reserved in the lease out of which the under-lease was derived, as he would have had if such former lease had been still continued or as he would have had if the respective under-leases had been renewed under the new principal lease. R.S.O. 1970, c. 236, s. 63.

Who may
renew on
behalf of
persons out
of Ontario

64.—(1) Where a person who, in pursuance of any covenant or agreement in writing, if in Ontario and amenable to the process of the Supreme Court, might be compelled to execute any lease by way of renewal, is not in Ontario or is not amenable to the process of the court, the court, upon the motion of any person entitled to such renewal, whether such person is or is not under any disability, may direct such person as the court thinks proper to appoint for that purpose to accept a surrender of the subsisting lease and to make and execute a new lease in the name of the person who ought to have renewed it.

Validity of
such new
lease

(2) A new lease executed by the person so appointed is as valid as if the person in whose name it was made was alive and not under any disability and had himself executed it.

Discretion
of court
to direct
action to be
brought

(3) In every such case it is in the discretion of the court to direct an action to be brought to establish the right of the person seeking the renewal, and not to make the order for such new lease unless by the judgment to be made in such action, or until after it has been entered.

Conditions

(4) A renewed lease shall not be executed by virtue of this section in pursuance of any covenant or agreement unless the sum or sums of money, if any, that ought to be paid on such renewal and the things, if any, that ought to be performed in pursuance of such covenant or agreement by the tenant be first paid and performed, and counterparts of every such renewed lease shall be duly executed by the tenant.

Premiums,
how to be
paid

(5) All sums of money that are had, received or paid for, or on account of, the renewal of any lease by any person out of Ontario or not amenable to the process of the Supreme Court, after a deduction of all necessary incidental charges and expenses, shall be paid to such person or in such manner or into the Supreme Court to such account, and be applied and disposed of, as the court directs.

(6) The court may order the costs and expenses of and Costs relating to the applications, orders, directions, conveyances and transfers, or any of them, to be paid and raised out of or from the land, or the rents in respect of which they are respectively made, in such manner as the court considers proper. R.S.O. 1970, c. 236, s. 64.

PART II

65. In this Part, “judge” means the judge of the county Interpre- or district court of the county or district in which a distress tation to which this Part applies is made. R.S.O. 1970, c. 236, s. 65.

66.—(1) Where goods or chattels are distrained by a Disputes as landlord for arrears of rent and the tenant disputes the right to right to of the landlord to distrain in respect of the whole or any part distrain of the goods or chattels, or disputes the amount claimed by the landlord, or the tenant claims to set off against the rent a debt that the landlord disputes, the landlord or the tenant may apply to the judge to determine the matters so in dispute, and the judge may hear and determine them in a summary way, and may make such order in the premises as he considers just.

(2) Where the tenant disputes the right of the landlord to Application distrain in respect of the whole or any part of the goods or to judge by chattels, or disputes the amount claimed by the landlord, the landlord or landlord or the tenant may, before any distress has been tenant made, apply to the judge to determine the matter so in dispute, and the judge may hear and determine it in a summary way, and may make such order in the premises as he considers just. R.S.O. 1970, c. 236, s. 66.

67. When notice of such an application has been given Order of to the landlord or tenant, as the case may be, the judge, judge pending the disposition of it by him, may make such order pending de- as he considers just for the restoration to the tenant of the termination whole or any part of the goods or chattels distrained, or of dispute preventing a distress being made, upon the tenant giving security, by payment into court or otherwise as the judge directs, for the payment of the rent that is found due to the landlord and for the costs of the distress and of the proceedings before the judge and of any appeal from his order, or such of them as the tenant may be ordered to pay. R.S.O. 1970, c. 236, s. 67.

68. The judge has jurisdiction and authority to determine Jurisdiction any question arising upon the application that the court of of judge which he is judge has jurisdiction to determine in an action brought in that court. R.S.O. 1970, c. 236, s. 68.

Where judge
to direct
that action
be brought
or issue
tried

69. Where the amount of the rent claimed by the landlord exceeds \$800 or where any question is raised that a county or district court would not have jurisdiction to try in an action brought in such court, the judge shall not, without the consent in writing of the landlord and the tenant, deal with the application summarily, but shall direct an action to be brought or an issue to be tried in the Supreme Court for the determination of the matters in dispute. R.S.O. 1970, c. 236, s. 69.

Interim
order for
restoration
of goods
on security
being given,
etc.

70.—(1) Where the judge directs an action to be brought or an issue to be tried under section 69, he has the like power as to the restoration to the tenant of the goods or chattels or of any part of them and to the prevention of a distress being made as is conferred by section 67, and, where it is exercised, the security shall be as provided in that section except that, as to costs, it shall be not only for the costs of the proceedings before the judge but also for the costs of the action or issue, including any appeal therein or such of them as the tenant may be ordered to pay.

Costs

(2) The Supreme Court shall determine by whom and in what manner the costs of the action or issue and of the application to the judge are to be borne and paid.

Entry of
judgment

(3) Judgment may be entered in accordance with the direction of the court, made at or after the trial, and may be enforced in like manner as a judgment of the court. R.S.O. 1970, c. 236, s. 70.

When
decision of
judge final

71. Where the amount claimed by the landlord does not exceed \$100, the decision of the judge is final. R.S.O. 1970, c. 236, s. 71.

Appeal from
summary
determina-
tion

72. Where the amount claimed by the landlord exceeds \$100, an appeal lies from any order of the judge made on an application to him under section 66 by which the matters in dispute are determined, in like manner as if it were a judgment of the court of which he is judge pronounced in an action. R.S.O. 1970, c. 236, s. 72.

Appeal
where action
brought or
issue tried

73. Where an issue is tried, there is the same right to appeal from the judgment as if the judgment had been pronounced in an action. R.S.O. 1970, c. 236, s. 73.

Scale of
costs

74. Where the amount claimed by the landlord does not exceed \$100, the costs of the proceedings before the judge

shall be on the small claims court scale, and where the amount claimed exceeds \$100, they shall be on the county court scale, except in an action or issue in the Supreme Court directed under section 69. R.S.O. 1970, c. 236, s. 74.

75. Nothing in this Part takes away or affects any remedy that a tenant may have against his landlord or require a tenant to proceed under this Part instead of by bringing an action, but where, instead of proceeding under this Part, he proceeds by action, the court in which the action is brought, if of opinion that it was unnecessarily brought and that a complete remedy might have been had by a proceeding under this Part, may direct the tenant, although he succeeds, to pay any additional costs occasioned by his having brought the action. R.S.O. 1970, c. 236, s. 75. Other remedies of tenant

PART III

76.—(1) Where a tenant after his lease or right of occupation, whether created by writing or by parol, has expired or been determined, either by the landlord or by the tenant, by a notice to quit or notice pursuant to a proviso in a lease or agreement in that behalf, or has been determined by any other act whereby a tenancy or right of occupancy may be determined or put an end to, wrongfully refuses or neglects to go out of possession of the land demised to him, or which he has been permitted to occupy, his landlord may apply upon affidavit to the judge of the county or district court of the county or district in which the land lies to make the inquiry hereinafter provided for. Application to county court judge against overholding tenant

(2) The judge shall in writing appoint a time and place at which he will inquire and determine whether the person complained of was tenant to the complainant for a term or period that has expired or has been determined by a notice to quit or for default in payment of rent or otherwise, and whether the tenant holds the possession against the right of the landlord, and whether the tenant, having no right to continue in possession, wrongfully refuses to go out of possession. Inquiry and determination

(3) Notice in writing of the time and place appointed, stating briefly the principal facts alleged by the complainant as entitling him to possession, shall be served upon the tenant or left at his place of abode at least three days before the day so appointed, if the place appointed is not more than twenty miles from the tenant's place of abode, and one day in addition for every twenty miles above the first twenty, Notice

reckoning any broken number above the first twenty as twenty miles, to which notice shall be annexed a copy of the judge's appointment and of the affidavit on which it was obtained, and of the documents to be used upon the application. R.S.O. 1970, c. 236, s. 76.

Proceedings,
how entitled

77. The proceedings under this Part shall be entitled in the county or district court of the county or district in which the land lies, and shall be styled:

In the matter of (*giving the name of the party complaining*),
Landlord, against (*giving the name of the party complained against*)
Tenant.

R.S.O. 1970, c. 236, s. 77.

Proceedings
in default of
appearance

78.—(1) If, at the time and place appointed, the tenant fails to appear, the judge, if it appears to him that the tenant wrongfully holds against the right of the landlord, may order a writ of possession (Form 3) directed to the sheriff of the county or district in which the land lies to be issued commanding him forthwith to place the landlord in possession of the land.

In case of
appearance

(2) If the tenant appears, the judge shall, in a summary manner, hear the parties and their witnesses, and examine into the matter, and, if it appears to the judge that the tenant wrongfully holds against the right of the landlord, he may order the issue of the writ. R.S.O. 1970, c. 236, s. 78.

Power of
amendment

79. The judge has the same power to amend or excuse irregularities in the proceedings as he would have in an action. R.S.O. 1970, c. 236, s. 79.

Appeal

80.—(1) An appeal lies to the Divisional Court from the order of the judge granting or refusing a writ of possession. R.S.O. 1970, c. 236, s. 80 (1), *revised*.

Discharging
order for
possession
on appeal

(2) If the Divisional Court is of opinion that the right to possession should not be determined in a proceeding under this Part, the court may discharge the order of the judge, and the landlord may in that case proceed by action for the recovery of possession.

Restoring
tenant to
possession

(3) When the order is discharged, if possession has been given to the landlord under a writ of possession, the court may direct that possession be restored to the tenant. R.S.O. 1970, c. 236, s. 80 (2, 3).

PART IV

RESIDENTIAL TENANCIES

81. In this Part,Interpre-
tation

- (a) “caretaker’s premises” means residential premises used for residential purposes by a person employed as a caretaker, janitor, manager, watchman, security guard, or superintendent in respect of the building in which the residential premises are situated;
- (b) “mobile home” means any dwelling that is designed to be made mobile, and constructed or manufactured to provide a permanent residence for one or more persons, but does not include a travel trailer or tent trailer or trailer otherwise designed;
- (c) “mobile home park” means the residential premises and the land, structures and facilities of which the landlord retains possession and that are intended for the common use and enjoyment of the tenants of the landlord where two or more occupied mobile homes are located for a period of sixty days or more;
- (d) “security deposit” means money or any property or right paid or given by a tenant of residential premises to a landlord or his agent or to anyone on his behalf to be held by or for the account of the landlord as security for the performance of an obligation or the payment of a liability of the tenant or to be returned to the tenant upon the happening of a condition;
- (e) “tenancy agreement” means an agreement between a tenant and a landlord for possession of residential premises, whether written, oral or implied. 1975 (2nd Sess.), c. 13, s. 2.

82.—(1) This Part applies to tenancies of residential premises and tenancy agreements notwithstanding any other Act or Parts I, II or III of this Act and notwithstanding any agreement or waiver to the contrary except as specifically provided in this Part.

Application
of Part

Application
to existing
tenancies

(2) Except where otherwise expressly provided in this Part, this Part applies to tenancies under tenancy agreements entered into or renewed before and subsisting on the 1st day of January, 1970 or entered into on or after the 1st day of January, 1970. R.S.O. 1970, c. 236, s. 82.

Delivery
of copy of
tenancy
agreement

83.—(1) Where a tenancy agreement in writing is executed by a tenant on or after the 1st day of January, 1970, the landlord shall ensure that a fully executed duplicate original copy of the tenancy agreement is delivered to the tenant within twenty-one days after its execution and delivery by the tenant.

Failure to
deliver copy
of tenancy
agreement

(2) Where the copy of a tenancy agreement is not delivered in accordance with subsection (1), the obligations of the tenant thereunder cease until such copy is delivered to him. R.S.O. 1970, c. 236, s. 83.

Security
deposits

84.—(1) A landlord shall not require or receive a security deposit from a tenant under a tenancy agreement entered into or renewed on or after the 1st day of January, 1970 other than the rent for a rent period not exceeding one month, which payment shall be applied in payment of the rent for the last rent period immediately preceding the termination of the tenancy. R.S.O. 1970, c. 236, s. 84 (1); 1972, c. 123, s. 1.

Interest

(2) A landlord shall pay annually to the tenant interest on the security deposit for rent referred to in subsection (1) at the rate of 6 per cent per year.

Post-dated
cheques

(3) On and after the 1st day of January, 1970, a landlord or a tenancy agreement shall not require the delivery of any post-dated cheque or other negotiable instrument to be used for payment of rent. R.S.O. 1970, c. 236, s. 84 (2, 3).

Security
deposits
already held

85.—(1) This section applies to security deposits held by landlords on the 1st day of January, 1970 other than security deposits for rent only as described in section 84.

Interest

(2) The landlord shall pay interest annually on any moneys held by him as a security deposit at the rate of 6 per cent per year.

(3) Subject to subsection (4), the landlord shall pay the security deposit to the tenant, together with the unpaid interest that has accrued thereon, within fifteen days after the tenancy is terminated or renewed, but a judge of the county or district court of the county or district in which the premises are situate may, upon summary application therefor, extend the time to such longer period as he considers proper. Repayment

(4) Where the landlord proposes to retain any amount out of the security deposit, he shall so notify the tenant together with the particulars of and grounds for the retention and he shall not retain such amount unless, Retentions

- (a) the tenant consents thereto in writing after receipt of the notice; or
- (b) he obtains an order of the judge under subsections (5) and (6).

(5) A landlord may apply to a judge of the county or district court in the county or district in which the premises are situate for an order authorizing the retention of all or part of a security deposit in the same manner as upon an application for termination of a tenancy and section 113 applies to the application with necessary modifications. Order for retention

(6) Upon an application under subsection (5), the judge may dismiss the application or order that all or part of the security deposit be retained by the landlord to be applied on account of any obligation of liability of the tenant for which the security deposit was taken. R.S.O. 1970, c. 236, s. 85. Idem

86.—(1) No landlord shall distrain for default in the payment of rent whether a right of distress has heretofore existed by statute, the common law or contract. Distress abolished

(2) Subsection (1) applies to default in payment of rent under a tenancy agreement entered into or renewed on or after the 1st day of January, 1970 and to default in payment under a tenancy agreement for a periodic tenancy of rent accruing on or after the 1st day of January, 1970. R.S.O. 1970, c. 236, s. 86. Application of subs. (1)

87.—(1) The doctrine of *interesse termini* is hereby abolished. Interesse termini abolished

(2) All tenancy agreements are capable of taking effect at law or in equity from the date fixed for commencement of the term, without actual entry. Idem

(3) This section applies to tenancy agreements entered into or renewed on or after the 1st day of January, 1970. R.S.O. 1970, c. 236, s. 87. Application of section

Frustration
R.S.O. 1980,
c. 179

88. The doctrine of frustration of contract applies to tenancy agreements and the *Frustrated Contracts Act* applies thereto. R.S.O. 1970, c. 236, s. 88.

Covenants
inter-
dependent

89. Subject to this Part, the common law rules respecting the effect of the breach of a material covenant by one party to a contract on the obligation to perform by the other party apply to tenancy agreements. R.S.O. 1970, c. 236, s. 89.

Covenants
in posse and
in esse

90. Covenants concerning things related to the rented premises run with the land whether or not the things are in existence at the time of the demise. R.S.O. 1970, c. 236, s. 90.

Right
to assign
or sublet

91.—(1) Subject to subsection (3), a tenant has the right to assign, sublet or otherwise part with possession of the rented premises.

Exception

(2) Subsection (1) does not apply to a tenant of premises administered by or for the Government of Canada or Ontario or a municipality, or any agency thereof, developed and financed under the *National Housing Act* (Canada).

R.S.C. 1970,
c. N-10

Consent

(3) A tenancy agreement may provide that the right of a tenant to assign, sublet or otherwise part with possession of the rented premises is subject to the consent of the landlord, and, where it is so provided, such consent shall not be arbitrarily or unreasonably withheld.

Charges

(4) A landlord shall not make any charge for giving his consent referred to in subsection (3), except his reasonable expenses incurred thereby.

Deter-
mination
of disputes

(5) A landlord or tenant may apply by summary application to a judge of the county or district court of the county or district in which the premises are situate who may determine any question arising under subsection (3) or (4). R.S.O. 1970, c. 236, s. 91.

Mitigation
of damages

92. Where a tenant abandons the premises in breach of the tenancy agreement, the landlord's right to damages is subject to the same obligation to mitigate his damages as applies generally under the rule of law relating to breaches of contract. R.S.O. 1970, c. 236, s. 92.

Privacy

93. Except in cases of emergency and except where the landlord has a right to show the premises to prospective tenants at reasonable hours after notice of termination of the tenancy has been given, the landlord shall not exercise a right to enter the rented premises unless he has first given written notice to the tenant at least twenty-four hours before

the time of entry, and the time of entry shall be during daylight hours and specified in the notice, except that nothing in this section shall be construed to prohibit entry with the consent of the tenant given at the time of entry. R.S.O. 1970, c. 236, s. 93.

94. No landlord or servant or agent of a landlord shall restrict reasonable access to the rented premises by candidates, or their authorized representatives, for election to the House of Commons, the Legislative Assembly, any office in a municipal government or a school board for the purpose of canvassing or distributing election material. R.S.O. 1970, c. 236, s. 94. Entry by canvassers

95. A landlord or tenant shall not, during occupancy of the rented premises by the tenant, alter or cause to be altered the locking system on any door giving entry to the rented premises except by mutual consent. R.S.O. 1970, c. 236, s. 95. Alteration of locks

96.—(1) A landlord is responsible for providing and maintaining the rented premises in a good state of repair and fit for habitation during the tenancy and for complying with health and safety standards, including any housing standards required by law, and notwithstanding that any state of non-repair existed to the knowledge of the tenant before the tenancy agreement was entered into. Landlord's responsibility to repair

(2) The tenant is responsible for ordinary cleanliness of the rented premises and for the repair of damage caused by his wilful or negligent conduct or that of persons who are permitted on the premises by him. Tenant's responsibility for cleanliness and damage

(3) The obligations imposed under this section may be enforced by summary application to a judge of the county or district court of the county or district in which the premises are situate and the judge may, Enforcement

- (a) terminate the tenancy subject to such relief against forfeiture as the judge sees fit;
- (b) authorize any repair that has been or is to be made and order the cost thereof to be paid by the person responsible to make the repair, such cost to be recovered by due process or by set-off;
- (c) make such further or other order as the judge considers appropriate.

Application

(4) This section applies to tenancies under tenancy agreements entered into or renewed on or after the 1st day of January, 1970 and to periodic tenancies on the first anniversary date of such tenancies on or after the 1st day of January, 1970 and in all other cases the law applies as it existed immediately before the 1st day of January, 1970. R.S.O. 1970, c. 236, s. 96.

Relief
against
acceleration
clauses

97.—(1) Where default has occurred in the payment of rent due under a tenancy agreement or in the observance of any obligation of the tenant and under the terms of the tenancy agreement, by reason of such default, the whole or any part of remaining rent for the term of the tenancy has become due and payable, at any time before or after the commencement of an action for the enforcement of the rights of the landlord and before judgment, the tenant may,

- (a) pay the rent due, exclusive of the rent not payable by reason merely of lapse of time; or
- (b) perform the obligation, and pay any expenses necessarily incurred by the landlord,

and thereupon he is relieved from the consequences of the default.

Disputes

(2) A landlord or tenant may apply by summary application to a judge of the county or district court of the county or district in which the premises are situate who may determine any question as to whether a tenant is entitled to relief under this section. R.S.O. 1970, c. 236, s. 97.

TERMINATION OF TENANCIES

Notice of
termination
of tenancy

98.—(1) Except as expressly otherwise provided in this Act, no tenancy of residential premises whether weekly, monthly, year to year or for any term certain, shall be terminated except upon notice by the landlord or the tenant given to the other in accordance with the provisions of this Part.

Exception

(2) Nothing in subsection (1) prevents a tenant at any time prior to the end of,

- (a) the period of the tenancy; or
- (b) the term of a tenancy for a fixed term,

from making application under section 96, 113 or 128 for an order declaring the tenancy terminated where the

tenant alleges an act or omission on the part of the landlord that constitutes grounds for such termination.

(3) Subsection (1) does not apply so as to require a landlord to give notice of termination where a tenant abandons residential premises or so as to require notice of termination by either party where there is a surrender of the tenancy agreement. 1975 (2nd Sess.), c. 13, s. 3, *part.*

99.—(1) A notice of termination of a tenancy shall be in writing and shall, Content
of
notice

- (a) be signed by the person giving the notice, or his agent;
- (b) identify the premises in respect of which the notice is given;
- (c) state the date on which the tenancy is to terminate; and
- (d) where a notice of termination is given by a landlord,
 - (i) specify the reasons and particulars respecting the termination, and
 - (ii) inform the tenant that he need not vacate the premises pursuant to the notice, but that the landlord may regain possession by application for a writ of possession to be obtained from the clerk or judge of the county court, which application the tenant is entitled to dispute.

(2) A notice of termination need not be in any particular form but notice may be given in the form prescribed by the regulations made under this Act. 1975 (2nd Sess.), c. 13, s. 3, *part.* Form
of
notice

100.—(1) A notice to terminate a weekly tenancy shall be given not less than twenty-eight days before the date the termination is specified to be effective and shall be specified to be effective on the last day of a week of the tenancy. Notice
to
terminate
weekly
tenancy

(2) For the purposes of this section, “week of the tenancy” means the weekly period on which the tenancy is based and not necessarily a calendar week and, unless otherwise specifically agreed upon, the week shall be deemed to begin on the day upon which rent is payable. 1975 (2nd Sess.), c. 13, s. 3, *part.* Idem

Notice to
terminate
monthly
tenancy

101.—(1) A notice to terminate a monthly tenancy shall be given not less than sixty days before the date the termination is specified to be effective and shall be specified to be effective on the last day of a month of the tenancy.

Idem

(2) For the purpose of this section, “month of the tenancy” means the monthly period on which the tenancy is based and not necessarily a calendar month and, unless otherwise specifically agreed upon, the month shall be deemed to begin on the day upon which rent is payable. 1975 (2nd Sess.), c. 13, s. 3, *part*.

Notice to
terminate
yearly
tenancy

102.—(1) A notice to terminate a year to year tenancy shall be given not less than sixty days before the last day of any year of the tenancy to be effective on the last day of that year of the tenancy.

Idem

(2) For the purposes of this section, “year of the tenancy” means the yearly period on which the tenancy is based and not necessarily a calendar year, and unless otherwise agreed upon, the year shall be deemed to begin on the day, or the anniversary of the day, on which the tenant first became entitled to possession. 1975 (2nd Sess.), c. 13, s. 3, *part*.

Notice to
terminate
tenancy
for fixed
term of
less than
one year

103. A notice to terminate a tenancy for a fixed term of less than one year shall be given not less than sixty days before the expiration date specified in the tenancy agreement, to be effective on such expiration date specified in the tenancy agreement. 1975 (2nd Sess.), c. 13, s. 3, *part*.

Notice to
terminate
tenancy
for fixed
term of
one year
or more

104. A notice to terminate a tenancy for a fixed term of one year or any longer period shall be given not less than sixty days before the expiration date specified in the tenancy agreement, to be effective on such expiration date specified in the tenancy agreement. 1975 (2nd Sess.), c. 13, s. 3, *part*.

Notice where
landlord
personally,
etc.,
requires
premises

105. Notwithstanding section 100, 101, 102, 103 or 104, where a landlord *bona fide* requires possession of residential premises at the end of,

(a) the period of the tenancy; or

(b) the term of a tenancy for a fixed term,

for the purpose of occupation by himself, his spouse or a child or parent of his or his spouse, the period of the notice of termination required to be given is not less than sixty days. 1975 (2nd Sess.), c. 13, s. 3, *part*.

Renewal
of tenancy
agreement
for fixed
term

106.—(1) Subject to subsection (2), upon the expiration of a tenancy agreement for a fixed term, the landlord and

the tenant shall be deemed to have renewed the tenancy agreement as a monthly tenancy agreement upon the same terms and conditions as are provided for in the expired tenancy agreement.

(2) Subsection (1) does not apply where the landlord and the tenant enter into a new tenancy agreement before the expiration of the term specified in the old tenancy agreement. 1975 (2nd Sess.), c. 13, s. 3, *part.* Exception

107.—(1) Notwithstanding section 100, 101, 102, 103, 104 or 105, where a landlord requires possession of residential premises for the purposes of, Termination
for
demolition,
etc.

- (a) demolition;
- (b) conversion to use for a purpose other than rental residential premises; or
- (c) repairs or renovations so extensive as to require a building permit and vacant possession of the premises,

the landlord may, at any time during the currency of the tenancy agreement, give notice of termination of the tenancy agreement, provided that the date of termination specified shall not be sooner than,

- (d) 120 days after the date the notice is given; and
- (e) the end of the tenancy agreement.

(2) Where a tenant receives notice of termination under subsection (1), he may at any time prior to the date specified in the notice terminate the tenancy agreement by, Earlier
termination
by tenant

- (a) giving the landlord not less than ten days notice of termination specifying an earlier date of termination of the tenancy; and
- (b) paying to the landlord on the date he gives notice of termination under clause (a) the proportionate amount of rent due up to the date the earlier termination is specified to be effective, and in determining the proportionate amount of rent due,

the tenant is entitled to take into account the amount of any security deposit he has paid for rent.

Tenant
has right
of first
refusal

(3) Where a tenant has received notice of termination under clause (1) (c) and has indicated in writing to the landlord, before vacating the premises, that he wishes to have a first refusal to occupy the premises as a tenant when the repairs or renovations are completed, the tenant shall have such right of first refusal to occupy the premises, at the lowest rent that would be charged to any other tenant for the same premises, provided that the tenant informs the landlord by registered mail of any change of address.

Application
by landlord
under s. 113

(4) A landlord who has given a notice of termination under subsection (1), may, not later than thirty days after the termination date specified in the notice of termination, make an application under section 113 for an order directing the issue of a writ of possession to be effective on a day not earlier than the termination date specified in the notice of termination.

Where
notice of
termination
void

(5) A notice of termination given by a landlord under subsection (1) is void and of no effect unless,

(a) the tenant delivers up possession of the premises;
or

(b) the landlord brings an application under section 113, not later than thirty days after the termination date specified in the notice of termination.

When writ
of possession
may issue

(6) A judge hearing an application under section 113 brought by a landlord under subsection (4), shall not direct the issue of a writ of possession unless he is satisfied that the landlord *bona fide* intends to demolish the premises, convert them to another use or extensively repair or renovate the premises, as the case may be, and has obtained all necessary permits or other authority that may be required to do so. 1975 (2nd Sess.), c. 13, s. 3, *part*.

Early
termination
for non-
payment of
rent

108.—(1) Notwithstanding section 100, 101, 102, 103, 104 or 105, where a tenant fails to pay rent in accordance with a tenancy agreement, the landlord may serve on the tenant notice of termination of the tenancy agreement to be effective not earlier than the twentieth day after the notice is given.

Notice to
specify
right of
tenant

(2) The notice of termination shall specify the right of the tenant to avoid the termination of the tenancy by payment of the rent demanded within fourteen days of his receiving the notice of termination.

(3) Where a tenant who receives notice of termination under subsection (1) pays to the landlord the rent that is due in accordance with the tenancy agreement and within fourteen days of the day he receives the notice, the notice of termination is void and of no effect.

Notice void
where rent
paid

(4) Where a tenant fails to pay the rent demanded within the fourteen days mentioned in subsection (2), the landlord is entitled to make application forthwith under section 113.

Application
by landlord
under s. 113

(5) Where application is brought by the landlord under section 113 and the tenant at any time before the judgment has become final, pays into court all the rent in arrears and the costs of the application, the proceedings in the application are forever stayed. 1975 (2nd Sess.), c. 13, s. 3, *part.*

When
proceedings
may be
stayed

109.—(1) Notwithstanding section 100, 101, 102, 103, 104 or 105, where,

Early
termination
by landlord
for cause

- (a) a tenant causes or permits undue damage to the rented premises or its environs and whether by his own wilful or negligent acts or by those of any person whom the tenant permits on the residential premises;
- (b) a tenant at any time during the term of the tenancy exercises or carries on, or permits to be exercised or carried on, in or upon the residential premises or any part thereof, any illegal act, trade, business, occupation or calling;
- (c) the conduct of the tenant or a person permitted in the residential premises by him is such that it substantially interferes with the reasonable enjoyment of the premises for all usual purposes by the landlord or the other tenants;
- (d) the safety or other *bona fide* and lawful right, privilege or interest of any other tenant in the residential premises is or has been seriously impaired by an act or omission of the tenant or a person permitted in the residential premises by him where such act or omission occurs in the residential premises or its environs; or
- (e) the number of persons occupying the residential premises on a continuing basis results in the contravention of health or safety standards including any housing standards required by law;

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- (f) a tenant of residential premises administered for or on behalf of the Government of Canada or Ontario or a municipality or any agency thereof or forming part of a non-profit, limited dividend housing project financed under the *National Housing Act* (Canada) has knowingly and materially misrepresented his income or that of other members of his family occupying the residential premises,

the landlord may serve on the tenant a notice of termination of the tenancy agreement to be effective not earlier than the twentieth day after the notice is given, specifying the act or acts complained of, and requiring the tenant, within seven days, to pay to the landlord the reasonable costs of repairing the premises or to make the repairs to the reasonable satisfaction of the landlord in the case mentioned in clause (a) or to cease and desist from the activities in the cases mentioned in clause (c) or (d) or to reduce the number of persons occupying the premises in the case mentioned in clause (e).

Notice void
where
tenant
complies

(2) Where a tenant who receives a notice from a landlord under clause (1) (a), (c), (d) or (e) within seven days of his receiving the notice pays the reasonable costs of repairs or makes arrangements satisfactory to the landlord to pay such costs or to make such repairs to the reasonable satisfaction of the landlord, or ceases and desists from the activities or reduces the number of persons occupying the premises, as the case may require, the notice of termination is null and void.

Application
by landlord
under
s. 113, etc.

(3) Where a tenant fails to comply with the terms of a notice served under subsection (1) within the seven day period specified in subsection (2) or where the notice is served pursuant to clause (1) (b) or (f), the landlord is entitled to make application forthwith under section 113.

Further
contra-
vention
by tenant

(4) Where a notice of termination has become null and void under subsection (2) by reason of the tenant complying with the terms of the notice within the seven days and the tenant within six months thereafter again contravenes any of the clauses of subsection (1), the landlord may serve on the tenant notice of termination of the tenancy agreement to be effective not earlier than the fourteenth day after the notice is given, and the landlord is entitled to make application forthwith under section 113.

When writ of
possession
may issue

(5) A judge hearing an application under section 113 brought by a landlord under subsection (3) or (4) shall not direct the issue of a writ of possession unless

the judge is satisfied that one or more of the causes of termination set out in subsection (1) exist.

(6) A notice of termination given by a landlord to a tenant is void and of no effect unless, Where notice of termination void

(a) the tenant delivers up possession of the premises; or

(b) the landlord brings an application under section 113,

not later than thirty days after the termination date specified in the notice. 1975 (2nd Sess.), c. 13, s. 3, *part*.

110.—(1) Where a landlord gives notice of termination to a tenant under section 100, 101, 102, 103, 104 or 105, the landlord may, not later than thirty days after the termination date specified in the notice of termination, make application under section 113 for an order directing the issue of a writ of possession and may join with the application a claim for any other order or judgment that the judge or clerk may make or give under that section. Termination by landlord at end of term for cause

(2) A notice of termination given by a landlord to a tenant is void and of no effect unless, Where notice of termination void

(a) the tenant delivers up possession of the premises; or

(b) the landlord brings an application under section 113,

not later than thirty days after the termination date specified in the notice.

(3) A judge hearing an application under section 113 brought by a landlord under subsection (1) shall not direct the issue of a writ of possession unless the judge is satisfied that one or more of the causes for termination of a tenancy agreement specified in section 108 or 109 exists or that, When writ of possession may issue

(a) the landlord *bona fide* requires possession of the residential premises for the purpose of occupation by himself, his spouse or a child or parent of his or his spouse, and the landlord has complied with section 105;

(b) the tenant has persistently failed to pay rent on the date it becomes due and payable;

(c) the residential premises in respect of which the notice of termination was given are administered

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for or on behalf of the Government of Canada or Ontario or a municipality or any agency thereof or form part of a non-profit, limited dividend housing project financed under the *National Housing Act* (Canada) and the tenant has ceased to meet the qualifications required for occupancy of such premises;

(d) the tenant was an employee of an employer who provided the tenant with residential premises during his employment and his employment has terminated; or

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c. 84

(e) the tenancy arose by virtue of or collateral to a *bona fide* agreement of purchase and sale of a proposed unit within the meaning of the *Condominium Act* and the agreement of purchase and sale has been terminated,

and the judge shall not consider any cause for termination not specifically mentioned in this Part. 1975 (2nd Sess.), c. 13, s. 3, *part*.

Posting up
notice
provisions

111.—(1) A landlord,

(a) of a mobile home park; or

(b) renting more than one rented premises in the same building and retaining possession of part of the building for use of all tenants in common,

shall,

(c) post up conspicuously and maintain posted the legal name of the landlord and his address for service; and

(d) post up conspicuously and maintain posted a copy of Part IV of this Act or a summary thereof as prescribed by the regulations.

Proceedings

(2) Any proceeding taken by or on behalf of a tenant may be commenced against the landlord in the name posted under clause (1) (c). 1975 (2nd Sess.), c. 13, s. 4.

Compensation when
premises not
vacated

112.—(1) A landlord is entitled to compensation for the use and occupation of premises after the tenancy has been terminated by notice.

Effect of
payment by
overholding
tenant where
tenancy
terminated
on notice

(2) The acceptance by a landlord of arrears of rent or compensation for use or occupation of the premises after notice of termination of the tenancy has been given does not operate as a waiver of the notice or as a reinstatement of the tenancy or as the creation of a new tenancy unless the parties so agree.

(3) The burden of proof that the notice has been waived or the tenancy has been reinstated or a new tenancy created is upon the person so claiming. ^{Burden of proof}

(4) A landlord's claim for arrears of rent or compensation for use and occupation by a tenant after the expiration or termination of the tenancy may be enforced by action or on summary application as provided in section 113. R.S.O. c. 236, s. 105. ^{Enforcement of claim}

113.—(1) A landlord or a tenant may apply by summary application to a judge of the county or district court of the county or district in which the premises are situate for an order, ^{Application for possession, arrears of rent, etc.}

- (a) declaring the tenancy agreement terminated;
- (b) for a writ of possession;
- (c) for the payment of arrears of rent;
- (d) for the payment of compensation under section 112;
- (e) for return of a security deposit and interest thereon;
- (f) for an abatement of rent;
- (g) granting relief against forfeiture on such terms and conditions as the judge may decide,

or any of them.

(2) Application for an order under clause (1) (c), (d), (f) or (g) may be made only where the tenant is in possession, whether in accordance with the tenancy agreement or as an overholding tenant. ^{Application}

(3) Application may be made for an order under clause (1) (c), (d), (e), (f) or (g) whether or not application is also made for an order under clause (1) (a) or (b). ^{Idem}

(4) The summary application shall be served on the respondent at least four clear days before the day for the return of the motion and it shall contain the following warning: ^{Service of application and contents of notice}

If you intend to dispute the applicant's claim, you must attend before the County Court Clerk at the hour of

..... o'clock in the noon on the day of

..... at his office in the Court House
at or file with him before the

day of a notice of dispute in writing, setting out briefly the grounds upon which you dispute the applicant's claim. If you do not attend or do not file a notice of dispute, the clerk of the court may sign an order directing,

- (a) that the tenancy agreement is terminated;
- (b) that a writ of possession issue;
- (c) judgment for the amount claimed for arrears of rent;
- (d) judgment for the payment of compensation under section 112;
- (e) judgment for the return of the security deposit and interest thereon;
- (f) that there be an abatement of rent in the amount claimed,

or any of them.

Dispute

(5) The respondent may dispute the applicant's claim by attending on the return of the motion or by filing with the clerk of the court before the day for the return of the motion a statement in writing setting out briefly the grounds upon which he disputes the applicant's claim.

Payment to clerk of amounts in dispute

(6) No dispute to a claim for arrears of rent or compensation under section 112 may be made by the tenant under subsection (5) on the grounds that the landlord is in breach of an express or implied covenant unless the tenant has first paid to the clerk of the court the amount of the rent and compensation claimed to be in arrears less,

- (a) amounts paid by the tenant for which he alleges he is entitled to set-off under clause 96 (3) (b), as substantiated by receipts filed; and
- (b) amounts of rent and compensation alleged by the tenant by his dispute to have been paid as substantiated by receipts filed or verified by affidavit.

(7) Where the claim of the applicant is not disputed, the clerk of the court may sign an order declaring the tenancy agreement terminated, or directing that a writ of possession issue or may give judgment for the amount of arrears of rent, or for the amount of compensation under section 112 or for the return of the security deposit and interest thereon or for an abatement of rent or any of them, in accordance with the claim. Default judgment

(8) Where the clerk of the court signs an order or judgment under subsection (7), the respondent may, within seven days after the service thereof, by motion, *ex parte*, apply to the judge to have the order or judgment set aside and the judge may so order upon being satisfied that reasonable grounds for dispute exist. Setting aside default judgment

(9) The judge may extend the time for bringing a motion under subsection (8) upon being satisfied that a proper case has been made for so doing. Extension of time for motion to set aside

(10) Where the claim of the applicant is disputed, the case may be set down for a hearing forthwith or at such time and place as the judge may appoint. Hearing

(11) After a hearing, the judge shall determine the applicant's claim and may make an order declaring the tenancy agreement terminated, or directing that a writ of possession issue or give judgment for the arrears of rent, or for compensation under section 112 found due, or for the return of the security deposit and interest thereon or for an abatement of rent, or any of them and, subject to clause 121 (2) (b), in any such order may impose such terms and conditions as the judge considers appropriate. Order and judgment

(12) Where an application is brought under this section and application has also been brought under section 96 or 128, the judge may, in his discretion, fix a common date for the hearing and hear and determine all the matters at issue between the parties. 1975 (2nd Sess.), c. 13, s. 5 (1). Judge may fix common hearing date

114.—(1) Where a tenant has given a landlord notice of termination of a tenancy agreement or where there is an agreement to terminate in writing the landlord may, not later than thirty days after the termination date specified, file with the clerk of the county or district court Application by landlord for writ of possession where tenant has given notice of termination or has agreed to termination

of the county or district in which the premises are situate a copy of the notice of termination or agreement in writing verified by affidavit, and the clerk of the court shall sign an order directing that a writ of possession issue, effective not earlier than the date specified in the notice of termination or the agreement to terminate.

Setting
aside
order

(2) Where the clerk of the court signs an order under subsection (1), the tenant may, within four days after service thereof, apply to the judge *ex parte* to have the order set aside and the judge may so order upon being satisfied that reasonable grounds for dispute exist.

Hearing

(3) Where the judge sets aside an order under subsection (2), the judge shall in writing appoint a time and place for a hearing to determine the landlord's claim and the provisions of section 113 apply with necessary modifications.

Where
notice of
termination
void

(4) A notice of termination given by a tenant to a landlord is void and of no effect unless,

(a) the tenant delivers up possession of the premises;
or

(b) the landlord brings an application under this section,

not later than thirty days after the termination date specified in the notice. 1975 (2nd Sess.), c. 13, s. 6, *part*.

Termination
in respect
of
caretaker's
premises

115.—(1) Notwithstanding anything in this Part, where a landlord has entered into a tenancy agreement in respect of caretaker's premises, unless otherwise agreed, the tenancy of the tenant is terminated on the day on which the employment of the tenant is terminated and the tenant shall within one week thereafter vacate the caretaker's premises.

Application
by landlord
under s. 113

(2) If the tenant fails to vacate the premises as set out in subsection (1), the landlord may forthwith make application under section 113.

No rent
or
compen-
sation
to be
charged

(3) A landlord shall not charge or receive any rent or compensation from the tenant in respect of the period of one week mentioned in subsection (1). 1975 (2nd Sess.), c. 13, s. 6, *part*.

Appeal

116.—(1) An appeal lies to the Divisional Court from a final order or judgment of a judge under this Part.

Payment
of
rent

(2) Where a payment of arrears of rent or compensation under section 112 has been made under subsection 113 (6)

in respect of a ground of dispute that is a subject of appeal, no notice of appeal may be filed by the tenant until any additional rent or compensation accruing to the date of the filing of the notice has been paid to the clerk of the county or district court and evidence of payments made under this subsection and subsection 116 (2) to the person entitled thereto. 1975 (2nd Sess.), c. 13, s. 6, *part*.

117. The judge of the county or district court may, where the judgment or order has become final, on the application of the landlord or tenant, direct the clerk to pay moneys held by him under subsection 113 (6) and subsection 116 (2) to the person entitled thereto. 1975 (2nd Sess.), c. 13, s. 6, *part*. Payment of rent out of court

118.—(1) A party to an application under this Part may be represented by counsel or an agent. Party may be represented by agent

(2) A judge of a county or district court may exclude from a hearing anyone, other than a barrister and solicitor qualified to practise in Ontario, appearing as an agent on behalf of a party if he finds that such person is not competent properly to represent or to advise the party or does not understand and comply at the hearing with the duties and responsibilities of an advocate or adviser. 1975 (2nd Sess.), c. 13, s. 6, *part*. Exclusion of agents

119. Where more than one person has a common interest in respect of an application under this Part, one or more of those persons may be authorized by a judge of the county or district court in which the premises are located to make or defend an application on behalf of, or for the benefit of all. 1975 (2nd Sess.), c. 13, s. 6, *part*. Representative actions

120.—(1) Subject to subsections (2) and (3), a judge of the county or district court may admit as evidence at a hearing under this Part, whether or not given or proven under oath or affirmation or admissible as evidence in a court, What evidence is admissible

(a) any oral testimony; and

(b) any document or other thing,

relevant to the subject-matter of the proceedings and may act on such evidence, but the judge may exclude anything unduly repetitious.

(2) Nothing is admissible in evidence at a hearing,

(a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or What evidence is inadmissible

(b) that is inadmissible by any statute.

Conflicts

(3) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceedings.

Copies

(4) Where a judge is satisfied as to their authenticity, a copy of a document or other thing may be admitted as evidence at a hearing.

Photocopies

(5) Where a document has been filed in evidence at a hearing, the judge may, or the person producing it or entitled to it may with the leave of the judge cause the document to be photocopied and the judge may authorize the photocopy to be filed in evidence in the place of the document filed and release the document filed, or may furnish to the person producing it or the person entitled to it a photocopy of the document filed certified by the judge.

Certified
copy
admissible
in
evidence

(6) A document purporting to be a copy of a document filed in evidence at a hearing, certified to be a true copy thereof by the judge, is admissible in evidence in proceedings in which the document is admissible as evidence of the document. 1975 (2nd Sess.), c. 13, s. 6, *part*.

Recovery of
possession

121.—(1) Unless a tenant has vacated or abandoned rented premises, the landlord shall not regain possession of the premises on the grounds he is entitled to possession except under the authority of a writ of possession obtained under section 113 or 114. R.S.O. 1970, c. 236, s. 107 (1); 1972, c. 123, s. 4 (1); 1975 (2nd Sess.), c. 13, s. 7 (1).

Power of
judge

(2) Upon any application of a landlord for a writ of possession a judge may, notwithstanding any other provision of this Act or the tenancy agreement,

(a) refuse to grant the application unless he is satisfied, having regard to all the circumstances, that it would be unfair to do so; or

(b) order that the enforcement of the writ of possession be postponed for a period not exceeding one week.

Idem

(3) Without restricting the generality of subsection (2), the judge shall refuse to grant the application where he is satisfied that,

(a) the landlord is in breach of his responsibilities under this Act or of any material covenant in the tenancy agreement;

- (b) a reason for the application being brought is that the tenant has complained to any governmental authority of the landlord's violation of any statute or municipal by-law dealing with health or safety standards including any housing standard or by-law;
 - (c) a reason for the application being brought is that the tenant has attempted to secure or enforce his legal rights;
 - (d) a reason for the application being brought is that the tenant is a member of an association, the primary purpose of which is to secure or enforce legal rights of tenants, or that the tenant is attempting to organize such an association; or
 - (e) a reason for the application being brought is that the premises are occupied by children, provided that the occupation by the children does not constitute overcrowding and the premises are suitable for children.
- (4) A landlord shall not,
- (a) withhold reasonable supply of any vital service, such as heat, fuel, electricity, gas, water or other vital service, that it is his obligation to supply under the tenancy agreement or deliberately interfere with the supply of any such vital service whether or not it is his obligation to supply such service during the tenant's occupation of the premises and until the date on which a writ of possession is executed; or
 - (b) substantially interfere with the reasonable enjoyment of the premises for all usual purposes by a tenant or members of his household with intent to cause the tenant to give up possession of the premises or to refrain from asserting any of the rights provided by this Act or provided by the tenancy agreement. 1975 (2nd Sess.), c. 13, s. 7 (2).

Withholding
services

122.—(1) Any person who knowingly contravenes section 84, 85, 86, 93, 94, 95, 111, 121, 125, 126 or 127 is guilty of an offence and on conviction is liable to a fine not exceeding \$2,000. 1975 (2nd Sess.), c. 13, s. 8.

Order for
payment of
security
deposit
R.S.O. 1980,
c. 400

(2) Where a landlord is convicted of the offence of contravening section 84 or 85, the justice under the *Provincial*

Offences Act making the conviction may order the landlord to pay to the tenant the security deposit or any part thereof that is unpaid. R.S.O. 1970, c. 236, s. 108 (2).

Service of
notice, etc.

123.—(1) Except as otherwise provided in this Part,

- (a) any notice, process or document required or permitted to be served, delivered or given by a tenant to a landlord is sufficiently served, given or delivered if delivered personally to the landlord or his agent or sent by ordinary mail addressed to the landlord at the address posted under section 111;
- (b) any notice or document required or permitted to be given to or served on a tenant by a landlord may be given or served by handing it to the tenant but, where the notice or document cannot be given or served by reason of the tenant's absence from his premises or by reason of his evading service, the notice or document may be given or served,
 - (i) by handing it to an apparently adult person on the tenant's premises,
 - (ii) by posting it up in a conspicuous place upon some part of the premises, or
 - (iii) by sending it by registered mail to the tenant at the address where he resides. R.S.O. 1970, c. 236, s. 109 (1); 1972, c. 123, s. 6; 1975 (2nd Sess.), c. 13, s. 9.

Idem

(2) Where a document is given or delivered by mail, it shall be deemed to have been given or delivered on the third day after the date of mailing.

Exception

(3) Notwithstanding subsections (1) and (2), a judge may order any other method of service in respect of any matter before him. R.S.O. 1970, c. 236, s. 109 (2, 3).

LANDLORD AND TENANT ADVISORY BUREAU

Municipality
defined

124.—(1) In this section, "municipality" means a local municipality and includes a metropolitan municipality and a regional municipality but does not include an area municipality thereof.

By-laws to
establish
Landlord
and Tenant
Advisory
Bureau

(2) The council of a municipality may by by-law establish a Landlord and Tenant Advisory Bureau.

(3) The functions of a Landlord and Tenant Advisory Bureau are, Functions of Bureau

- (a) to advise landlords and tenants in tenancy matters;
 - (b) to receive complaints and seek to mediate disputes between landlords and tenants;
 - (c) to disseminate information for the purpose of educating and advising landlords and tenants concerning rental practices, rights and remedies; and
 - (d) to receive and investigate complaints of conduct in contravention of legislation governing tenancies.
- R.S.O. 1970, c. 236, s. 110.

MOBILE HOME PARKS

125.—(1) Subject to subsections (2) and (3), a tenant has the Tenant's right to sell, etc. right to sell, lease, or otherwise part with the possession of his mobile home while it is situated within a mobile home park.

(2) Subsection (1) does not apply to a tenant of premises Exception administered by or for the Government of Canada or Ontario or a municipality, or any agency thereof.

(3) A tenancy agreement may provide that the right of a Consent tenant to sell, lease, or otherwise part with possession of his mobile home while it is situated in a mobile home park is subject to the consent of the landlord, and, where it is so provided, such consent shall not be arbitrarily or unreasonably withheld.

(4) A landlord shall not make any charge for giving his Charges consent referred to in subsection (3), except his reasonable expenses incurred thereby.

(5) A landlord or a tenant may apply by summary Determination of disputes application to a judge of the county or district court of the county or district in which the premises are situate, who may determine any question arising under subsections (3) and (4).

(6) A landlord shall not act as the agent of the tenant Landlord as agent in any negotiations to sell, lease, or otherwise part with the possession of a mobile home situated in a mobile home park, except pursuant to a written agency contract. 1975 (2nd Sess.), c. 13, s. 10, *part.*

Entrance and
exit fees
prohibited

126. A landlord shall not make any charge whatsoever in respect of,

- (a) the entry of a mobile home into a mobile home park;
- (b) the exit of a mobile home from a mobile home park;
- (c) the installation of a mobile home in a mobile home park;
- (d) the removal of a mobile home from a mobile home park; or
- (e) the granting of a tenancy in a mobile home park,

except to the extent of his reasonable expenses incurred thereby. 1975 (2nd Sess.), c. 13, s. 10, *part*.

Restraint
of trade
prohibited

127.—(1) Subject to subsections (2) and (3), a landlord shall not restrict in any way the right of a tenant to purchase goods or services from the person of his choice.

Standards

(2) A landlord may set reasonable standards for mobile home equipment.

When
tradesman
may be
prohibited
from entry

(3) Where a tradesman has,

- (a) unduly disturbed the peace and quiet of the mobile home park;
- (b) failed to observe such reasonable rules of conduct as have been established by the landlord; or
- (c) violated the traffic rules of the mobile home park,

despite a request by the landlord to discontinue such conduct, the landlord may after due notice restrict or prohibit the entry of such tradesman into the mobile home park. 1975 (2nd Sess.), c. 13, s. 10, *part*.

Responsi-
bility
of landlord

128.—(1) A landlord is responsible for,

- (a) providing or ensuring the availability of a means for the removal or disposal of garbage in the mobile home park at reasonable intervals;
- (b) maintaining mobile home park roads in a good state of repair;

- (c) removing excess snow from mobile home park roads;
- (d) maintaining the plumbing, sewage, fuel and electrical systems in the mobile home park in a good state of repair;
- (e) maintaining the mobile home park grounds and all buildings, structures, enclosures and equipment intended for the common use of the tenants in a good state of repair; and
- (f) the repair of damage to the tenant's property caused by the wilful or negligent conduct of the landlord.

(2) The tenant is responsible for ordinary cleanliness of the rented premises and for repair of damage to the landlord's property caused by his wilful or negligent conduct or that of persons who are permitted on the premises by him. Responsi-
bility
of tenant

(3) The obligations imposed under this section may be enforced by summary application to a judge of the county or district court of the county or district in which the mobile home park is situate and the judge may, Enforcement

- (a) terminate the tenancy subject to such relief against forfeiture as the judge sees fit;
- (b) authorize any repair that has been or is to be made and order the cost thereof to be paid by the person responsible to make the repair, such cost to be recovered by due process or by set-off;
- (c) make such further or other order as the judge considers appropriate. 1975 (2nd Sess.), c. 13, s. 10, *part.*

NOTICE OF RENT INCREASE

129.—(1) A landlord shall not increase the rent for residential premises unless he serves on the tenant a notice in writing setting out his intention to increase the rent and the amount of the increase intended to be made not less than ninety days prior to the end of, Notice of
rent
increase

- (a) the period of the tenancy; or
- (b) the term of a tenancy for a fixed period.

Where tenant
fails to give
notice of
termination

(2) Where a tenant who receives a notice under subsection (1) fails to give to the landlord notice of termination in accordance with section 99 within the time required under section 100, 101, 102, 103 or 104, as the case requires, he shall be deemed to have accepted,

(a) where the amount of the rent increase is not subject to review by law,

(i) the amount of the rent increase specified in the notice of the landlord, or

(ii) such other rent increase as may be agreed upon in writing between the landlord and the tenant; or

(b) where the amount of the rent increase is subject to review by law, such amount of rent increase as does not exceed the amount allowed under the law.

Deemed
acceptance
does not
constitute
waiver of
tenant's
rights

(3) The deemed acceptance by a tenant of an increase in rent in the case mentioned in clause (2) (b), does not constitute a waiver of the tenant's right to take whatever proceedings are available to him under any law in force that provides for the review of rent increases.

Where
increase
void
R.S.O. 1980,
c. 452

(4) Subject to the provisions of the *Residential Tenancies Act*, an increase in rent by the landlord where the landlord has not served a notice according to the provisions of subsection (1) is void. 1975 (2nd Sess.), c. 13, s. 10, *part*.

Regulations

130. The Lieutenant Governor in Council may make regulations,

(a) designating classes of accommodation that are deemed not to be residential premises for the purposes of this Act;

(b) prescribing forms and providing for their use;

(c) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1975 (2nd Sess.), c. 13, s. 10, *part*.

PART V

AMENDMENTS

131. On a day to be named by proclamation of the Lieutenant Governor, Proclamation
of
amendments

1. The title of this Act is repealed and the following substituted therefor:

The Commercial Tenancies Act

2. Clause 1 (c) is repealed. s. 1 (c),
repealed
3. Section 2 is repealed and the following substituted therefor: s. 2,
re-enacted

2. This Act does not apply to tenancies and tenancy agreements to which the *Residential Tenancies Act* applies. Application
R.S.O. 1980,
c. 452

4. Part IV is repealed. Pt. IV
(ss. 81-130),
repealed

FORM 1

(Section 34 (1))

NOTICE TO TENANT

Take notice that I claim \$.....for rent due to me in respect of the premises that you hold as my tenant, namely (*here briefly describe them*); and unless the said rent is paid, I demand from you immediate possession of the said premises; and I am ready to leave in your possession such of your goods and chattels as in that case only you are entitled to claim exemption for.

Take notice further, that if you neither pay the said rent nor give me possession of the said premises within three days after the service of this notice, I am by the *Landlord and Tenant Act* entitled to seize and sell, and I intend to seize and sell, all your goods and chattels, or such part thereof as may be necessary for the payment of the said rent and costs.

Dated this.....day of....., 19....
(Landlord).

To.....(*tenant*).

R.S.O. 1970, c. 236, Form 1.

FORM 2

(Section 35 (2))

NOTICE TO LANDLORD

Take notice that under the *Landlord and Tenant Act* I wish to set off against rent due by me to you the debt that you owe to me on your promissory note for.....dated.....
(*or as the case may be*).

Dated this.....day of....., 19....
(Tenant).

R.S.O. 1970, c. 236, Form 2.

FORM 3

(Section 78 (1))

WRIT OF POSSESSION

ONTARIO,

To WIT,

Elizabeth the Second, by the Grace of God, of the United Kingdom, Canada
and Her other Realms and Territories Queen, Head of the Commonwealth,
Defender of the Faith.

[L.S.]

To the Sheriff of the

Greeting:

Whereas
..... Judge of the Court
of, by his order dated the
day of, 19...., made under the *Landlord
and Tenant Act*, on the complaint of
..... against , adjudged
that was entitled to the possession
of
with the appurtenances in your bailiwick, and that a Writ should issue out
of Our said Court accordingly (*if costs are awarded add* and also ordered
and directed that the said
should pay the costs of the proceedings had under the said Act, which have
been taxed at the sum of).

THEREFORE, WE COMMAND YOU that without delay you cause the said
..... to have possession of the said land
and premises, with the appurtenances (*if costs are awarded add* and We also
command you that of the goods and chattels and lands and tenements of the
said in your bailiwick,
you cause to be made being the said
costs so taxed and have that money in Our said Court immediately after the
execution hereof, to be rendered to the said.....).

And in what manner you have
executed this Writ make appear to Our said Court immediately after the
execution hereof, and have there then this Writ.

Witness,, Judge of Our Said
Court at, this day
of, 19....

Clerk.

Issued from the office of the Clerk of the County (or District) Court of
.....
Clerk.

CHAPTER 233

Law Society Act

1. In this Act,Interpre-
tation

- (a) “bencher” means a bencher of the Society;
- (b) “Convocation” means a regular or special meeting of the benchers convened for the purpose of transacting business of the Society;
- (c) “member” means a member of the Society and includes a life member but does not include an honorary member or a student member;
- (d) “regulations” means the regulations made under this Act;
- (e) “rules” means the rules made under this Act;
- (f) “Secretary” means the Secretary of the Society;
- (g) “Society” means The Law Society of Upper Canada;
- (h) “Treasurer” means the Treasurer of the Society.
R.S.O. 1970, c. 238, s. 1.

THE SOCIETY

2. The Law Society of Upper Canada authorized to be established by an Act of the Parliament of Upper Canada passed in the thirty-seventh year of the reign of his late Majesty George III and incorporated by an Act of the Parliament of Upper Canada passed in the second year of the reign of his late Majesty George IV is hereby continued as a corporation without share capital composed of the Treasurer, the benchers and the other members from time to time. R.S.O. 1970, c. 238, s. 2.

Society
continued
1797, c. 13
1822, c. 5

3. A meeting of the members shall be held annually at such place and at such time as is determined from time to time in Convocation, notice of which shall be given by publication as provided by the rules. R.S.O. 1970, c. 238, s. 3.

Annual
meeting

4. The permanent seat of the Society shall continue to be at Osgoode Hall in the City of Toronto. R.S.O. 1970, c. 238, s. 4.

Seat

Acquisition
and
disposition
of property

5.—(1) The Society may purchase, acquire, take by gift, bequest, devise, donation, or otherwise any real or personal property for its purposes, and it may hold, sell, mortgage, lease, or dispose of any of its real or personal property.

Trustee
powers

(2) The Society has and may exercise all powers of trustees under the laws of Ontario.

Borrowing
power

(3) The Society may borrow money for its purposes. R.S.O. 1970, c. 238, s. 5.

R.S.O. 1980,
c. 95,
ss. 84, 317
not to apply

6.—(1) Sections 84 and 317 of the *Corporations Act* do not apply to the Society.

Conflict

(2) In the event of conflict between any provision of this Act and any provision of the *Corporations Act*, the provision of this Act prevails. R.S.O. 1970, c. 238, s. 6.

Treasurer

7. The Treasurer is the president and head of the Society. R.S.O. 1970, c. 238, s. 7.

Secretary

8. The Secretary is the chief administrative officer of the Society. R.S.O. 1970, c. 238, s. 8.

Liability
of benchers,
officers and
employees

9. No action or other proceedings for damages shall be instituted against the Treasurer or any bencher, official of the Society, or person appointed in Convocation for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation or a rule, or for any neglect or default in the performance or exercise in good faith of any such duty or power. R.S.O. 1970, c. 238, s. 9.

BENCHERS

Government
of the
Society

10. The benchers shall govern the affairs of the Society, including the call of persons to practise at the bar of the courts of Ontario and their admission and enrolment to practise as solicitors in Ontario. R.S.O. 1970, c. 238, s. 10.

Honorary
benchers

11. Every person,

(a) who is an honorary bencher on the 1st day of October, 1970; or

(b) who after that day is made an honorary bencher,

is an honorary bencher but as such has only the rights and privileges prescribed by the rules. R.S.O. 1970, c. 238, s. 11.

12.—(1) The following, if and while they are members, *Ex officio* benchers
are *ex officio* benchers:

1. The Minister of Justice and Attorney General for Canada.
2. The Solicitor General for Canada.
3. The Attorney General for Ontario and every person who has held that office.
4. Every retired judge of the Supreme Court of Canada or of the Federal Court of Canada who was at the time of his appointment a member of the bar of Ontario and who became an *ex officio* bencher under paragraph 5 of section 5 of *The Law Society Act* as that paragraph was before it was repealed in 1964. R.S.O. 1960,
c. 207
5. Every retired judge of the Supreme Court of Ontario who became an *ex officio* bencher under paragraph 6 of section 5 of *The Law Society Act* as that paragraph was before it was repealed in 1964.
6. Every person who was elected a bencher at four quinquennial elections and became an *ex officio* bencher under paragraph 4 of section 5 of *The Law Society Act* as that paragraph was before it was re-enacted in 1964.
7. Every person who was elected a bencher at three quinquennial elections and served as a bencher for fifteen years and became an *ex officio* bencher under paragraph 4 of section 5 of *The Law Society Act* as re-enacted in 1964.
8. Every person who is elected a bencher at three elections and serves as a bencher for fifteen years before the election in 1975.
9. Every person who is elected a bencher at four elections and who serves as a bencher for sixteen years. R.S.O. 1970, c. 238, s. 12 (1); 1972, c. 1, s. 9 (7).

(2) An *ex officio* bencher under subsection (1) has all the rights and privileges prescribed by the rules, other than the right to vote in Convocation or in a committee. Rights and
privileges

(3) Notwithstanding subsection (2), an *ex officio* bencher under paragraph 3 of subsection (1) has the right to vote in Convocation and in a committee. Attorney
General
has vote

Option

(4) An elected benchner who becomes qualified as an *ex officio* benchner under subsection (1) may, if he chooses, continue as an elected benchner and is eligible to be re-elected in any subsequent election of benchners without prejudice to his right to become an *ex officio* benchner at any time so long as he is still an elected benchner. R.S.O. 1970, c. 238, s. 12 (2-4).

Attorney General, guardian of the public interest

13.—(1) The Attorney General for Ontario shall serve as the guardian of the public interest in all matters within the scope of this Act or having to do with the legal profession in any way, and for this purpose he may at any time require the production of any document, paper, record or thing pertaining to the affairs of the Society. R.S.O. 1970, c. 238, s. 13 (1); 1972, c. 1, s. 9 (7).

Admissions

(2) No admission of any person in any document, paper, record or thing produced under subsection (1) is admissible in evidence against that person in any proceedings other than disciplinary proceedings under this Act. R.S.O. 1970, c. 238, s. 13 (2).

Protection of Minister

(3) No person who is or has been the Attorney General for Ontario is subject to any disciplinary proceedings of the Society or to any penalty imposed in Convocation or in a committee of benchners for anything done by him while exercising the functions of such office. R.S.O. 1970, c. 238, s. 13 (3); 1972, c. 1, s. 9 (7).

Treasurers and former Treasurers are *ex officio* benchners

14.—(1) Every member who has been or is elected to the office of Treasurer is an *ex officio* benchner with all the rights and privileges of an elected benchner.

Rights and privileges

(2) Every *ex officio* benchner under subsection (1) shall, upon attaining the age of seventy-five years, continue to be an *ex officio* benchner with all the rights and privileges prescribed by the rules, other than the right to vote in Convocation or in a committee. R.S.O. 1970, c. 238, s. 14.

Election of benchners

15.—(1) An election of benchners shall be held in 1971 and in every fourth year thereafter at each of which forty benchners shall be elected by secret ballot from and by the members in accordance with this Act and the rules.

Area representation

(2) Twenty of the forty benchners mentioned in subsection (1) shall be members whose addresses on the records of the Society on the last day for nominations are within The Municipality of Metropolitan Toronto as it is constituted on that day.

Idem

(3) Twenty of the forty benchners mentioned in subsection (1) shall be members whose addresses on the records of the Society on the last day for nominations are outside The

Municipality of Metropolitan Toronto as it is constituted on that day. R.S.O. 1970, c. 238, s. 15.

16. Every member in good standing and not in arrear to the Society for any fee or levy is an elector qualified to vote at an election of benchers. R.S.O. 1970, c. 238, s. 17.

Who may
vote

17. No member is eligible to be a candidate for bencher at any election who is not qualified to vote at the election. R.S.O. 1970, c. 238, s. 18.

Qualifica-
tion of
candidates

18. Any bencher is eligible for re-election. R.S.O. 1970, c. 238, s. 19.

Benchers
may be
re-elected

19. Any member who was qualified to vote at an election of benchers may, in accordance with the rules, petition Convocation against the election of any bencher. R.S.O. 1970, c. 238, s. 20.

Election
petitions

20. The elected benchers shall take office at the first regular Convocation following their election and, subject to this Act, shall hold office until their successors take office. R.S.O. 1970, c. 238, s. 21.

Taking
office

21.—(1) Where there is a failure to elect the requisite number of qualified benchers, the remaining benchers shall as soon as convenient supply the deficiency by electing in Convocation the requisite number of qualified members as benchers.

Making up
deficiency

(2) Where there is a vacancy in the requisite number of benchers, the remaining benchers shall as soon as convenient fill the vacancy by electing in Convocation a qualified member as a bencher to fill the vacancy, but where at the last quadrennial election of benchers there were more qualified candidates than benchers to be elected, the remaining benchers shall as soon as convenient fill the vacancy by electing in Convocation as a bencher the qualified member who among the defeated candidates at such election received the greatest number of votes.

Filling of
vacancy

(3) The benchers elected under this section shall, subject to this Act, hold office until their successors take office. R.S.O. 1970, c. 238, s. 22.

Term of
office

22. The benchers may remove from office any elected bencher who fails to attend six consecutive regular Conventions. R.S.O. 1970, c. 238, s. 23.

Removal
for non-
attendance

Benchers
appointed
by
L.G. in C.

23.—(1) The Lieutenant Governor in Council may appoint four persons who are not members to be benchers of whom two shall be persons ordinarily resident in The Municipality of Metropolitan Toronto and two shall be persons ordinarily resident in Ontario outside of The Municipality of Metropolitan Toronto, and each person so appointed has all the rights and privileges of an elected bencher.

Expiration
of appoint-
ment

(2) The appointment of every person appointed under subsection (1) expires at the first regular Convocation following the election of benchers held next after the effective date of his appointment, and a person whose appointment expires is eligible for reappointment. 1973, c. 49, s. 1.

Quorum

24.—(1) Except as provided by subsection (2), ten benchers present and entitled to vote in Convocation constitute a quorum for the transaction of business.

Idem,
disciplinary
matters

(2) No disciplinary matter shall be dealt with in Convocation unless fifteen or more benchers are present and entitled to vote. R.S.O. 1970, c. 238, s. 24.

Election of
Treasurer

25.—(1) The benchers shall annually at the regular Convocation in the month of May, or at such other time as the benchers may fix, elect one of their number as Treasurer.

Treasurer
eligible for
re-election

(2) The Treasurer is eligible for re-election. R.S.O. 1970, c. 238, s. 25.

ADVISORY COUNCIL

Meeting

26. The Treasurer shall convene a meeting in each year consisting of,

- (a) the chairman and the vice-chairman of each standing committee;
- (b) the president of each county or district law association, or his nominee, being a member of his association; and
- (c) one member who is a full-time teacher at each law school in Ontario approved by the Society, to be appointed annually by the faculty of the law school,

to consider the manner in which the members of the Society are discharging their obligations to the public and generally matters affecting the legal profession as a whole. 1973, c. 49, s. 2.

ADMISSION OF MEMBERS

27.—(1) Every application for admission to the Society shall be on the prescribed form and be accompanied by the prescribed fees. ^{Form of applications}

(2) An applicant for admission to the Society shall be of good character. ^{Good character}

(3) No applicant for admission to the Society who has met all admission requirements shall be refused admission. ^{Where no refusal}

(4) No application for admission to the Society shall be refused until the applicant has been given an opportunity to appear in person before a committee of benchers. ^{Appearance before refusal}

(5) Where an applicant for admission to the Society is refused admission, he is entitled to a statement of the reasons for the refusal. ^{Statement of reasons}

(6) Where an application for admission to the Society has been refused, another application based on new evidence may be made at any time. R.S.O. 1970, c. 238, s. 27. ^{Subsequent applications}

CLASSES OF MEMBERS

28. Subject to sections 30, 31, 32, 34, 35, 36 and 38,

^{Classes of members}

(a) the persons,

^{honorary members}

(i) who are honorary members of the Society on the 31st day of December, 1980,

(ii) who after that day are made honorary members of the Society,

are honorary members with only the rights and privileges prescribed by the rules ;

(b) the persons, being Canadian citizens or other British subjects,

^{life members}

(i) who are honorary life members on the 31st day of December, 1980, or

(ii) who after that day become life members,

are life members with the rights and privileges of members, and such additional rights and privileges as are prescribed by the rules ;

members

(c) the persons, being Canadian citizens or other British subjects,

(i) who are members on the 31st day of December, 1980, or

(ii) who after that day successfully complete the Bar Admission Course and are called to the bar and admitted and enrolled as solicitors, or

(iii) who after that day transfer from a jurisdiction outside Ontario and are called to the bar and admitted and enrolled as solicitors,

are members and entitled to practise law in Ontario as barristers and solicitors;

student members

(d) the persons,

(i) who are students-at-law in the Bar Admission Course on the 31st day of December, 1980, or

(ii) who after that day become students-at-law in the Bar Admission Course,

are student members with the rights and privileges prescribed by the rules. R.S.O. 1970, c. 238, s. 28, *revised*.

Members are officers of the courts

29. Every member is an officer of every court of record in Ontario. R.S.O. 1970, c. 238, s. 29.

Resignation

30.—(1) A member or student member may make application to resign from the Society, and Convocation may accept the resignation of such member or student member whereupon all his rights and privileges as a member or student member, as the case may be, cease.

Re-admission

(2) Any former member or student member may make application for readmission as a member or student member, as the case may be, and Convocation may readmit such former member or student member. R.S.O. 1970, c. 238, s. 30.

Effect of appointment to Bench

31. The membership of any member or former member who has assumed office or hereafter assumes office as,

(a) a full-time judge under any Act of the Parliament of Canada; or

(b) a full-time judge under the *Provincial Courts Act*, or the *Small Claims Courts Act*; or

R.S.O. 1980, cc. 398, 476

- (c) the Senior Master or a full-time master or a full-time assistant master or a full-time local master of the Supreme Court or a full-time taxing officer,

is, while he continues in any such office, in abeyance, and, upon his ceasing to hold such office, shall be restored by his giving notice in writing to such effect to the Secretary. R.S.O. 1970, c. 238, s. 31.

32.—(1) When a member ceases to be a Canadian citizen or other British subject, he ceases to be a member. Effect of losing Canadian citizenship

(2) Any person whose membership terminated under subsection (1) may, upon again becoming a Canadian citizen or other British subject, make application for readmission as a member and Convocation may readmit him. R.S.O. 1970, c. 238, s. 32. Re-admission

DISCIPLINE

33.—(1) No disciplinary action under section 34, 35, 37 or 38 shall be taken unless, Complaint and hearing

(a) a complaint under oath has been filed in the office of the Secretary and a copy thereof has been served on the person whose conduct is being investigated;

(b) the person whose conduct is being investigated has been served with a notice of the time and place of the hearing; and

(c) a committee of Convocation has heard evidence of or on behalf of the complainant and, if the person whose conduct is being investigated appears at the hearing and so requests, has heard his evidence and any evidence on his behalf and has reached the decision that he is guilty.

(2) Any person presiding at a hearing may administer oaths to witnesses and require them to give evidence under oath. Power to take sworn evidence

(3) If the person whose conduct is being investigated fails to appear in answer to the notice at the time and place appointed, the hearing may be conducted in his absence. Failure to appear

(4) Hearings shall be held *in camera*, but if the person whose conduct is being investigated requests otherwise by a notice in writing delivered to the Secretary before the day fixed for the hearing, the committee may conduct the hearing in public or otherwise as it considers proper. Disciplinary hearings to be held in camera

Adjourn-
ments

(5) A hearing may be adjourned at any time and from time to time.

Attendance
of person
being
investigated

(6) A person whose conduct is being investigated, if present in person at the hearing, has the right to be represented by counsel, to adduce evidence and to make submissions, and any such person may be compelled to attend and give evidence in the manner provided in subsection (10), but such person shall be advised of his right to object to answer any question under section 9 of the *Evidence Act* and section 5 of the *Canada Evidence Act*.

R.S.O. 1980,
c. 145
R.S.C. 1970,
c. E-10

(7) At a hearing, the complainant and the person whose conduct is being investigated have the right to examine the witnesses called by them respectively and to cross-examine the witnesses opposed in interest, including the deponent of an affidavit or a statutory declaration submitted in evidence.

Hearing of
evidence

(8) The oral evidence submitted at a hearing shall be taken down in writing or by any other method authorized by the *Evidence Act*.

Rules of
evidence

(9) The rules of evidence applicable in civil proceedings are applicable at a hearing, except that an affidavit or statutory declaration of any person is admissible in evidence as *prima facie* proof of the statements made therein.

Summons
to witness

(10) The Treasurer, the chairman or a vice-chairman of a committee of Convocation, or the Secretary may, and the Secretary upon application of a person whose conduct is being investigated shall, issue a summons in the prescribed form commanding the attendance and examination of any person as a witness, and the production of any document or thing, the production of which could be compelled at the trial of an action, before the committee at the time and place mentioned in the summons and stating that failure to obey the summons will render the person liable to imprisonment on an application to the Supreme Court, but the person whose attendance is required is entitled to the like conduct money and payment for expenses and loss of time as upon attendance as a witness at a trial in the Supreme Court.

Failure of
witness to
appear, etc.

(11) If any person,

(a) on being duly summoned to appear as a witness makes default in attending; or

(b) being in attendance as a witness refuses to take an oath legally required to be taken, or to produce any document or thing in his power or control

legally required to be produced by him, or to answer any question which he is legally required to answer; or

- (c) does any other thing which would, if the committee had been a court of law having power to commit for contempt, have been contempt of that court,

the person presiding at the hearing may certify the offence of that person under his hand to the Supreme Court and the court may thereupon inquire into the alleged offence and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any submissions that may be offered in defence, punish or take steps for the punishment of that person in the like manner as if he had been guilty of contempt of court.

(12) The decision taken after a hearing shall be in writing Decision and shall contain or be accompanied by the reasons for the decision in which are set out the findings of fact and the conclusions of law, if any, based thereon, and a copy of the decision and the reasons therefor, together with a notice to the person whose conduct is being investigated of his right of appeal, shall be served upon him within thirty days after the date of the decision.

(13) Any document required to be served under this Act Service of documents upon a person whose conduct is being investigated shall be served personally upon him or by mailing a copy thereof in a registered letter addressed to him at his last known residence or office address as shown by the records of the Society, and service shall be effected not less than ten days before the date of the hearing or the event or thing required to be done, as the case may be, and proof by affidavit of the service is sufficient. R.S.O. 1970, c. 238, s. 33.

34. If a member is found guilty of professional misconduct or of conduct unbecoming a barrister and solicitor after due investigation by a committee of Convocation, Convocation may by order cancel his membership in the Society by disbarring him as a barrister and striking his name off the roll of solicitors or may by order suspend his rights and privileges as a member for a period to be named or may by order reprimand him or may by order make such other disposition as it considers proper in the circumstances. R.S.O. 1970, c. 238, s. 34. Disbarment, etc., for misconduct

35. If a member has been found pursuant to any Act to be mentally incompetent or mentally ill, or has been found after due inquiry by a committee of Convocation incapable of Suspension for incapacity

practising law as a barrister and solicitor by reason of age, physical or mental illness including addiction to alcohol or drugs, or any other cause, Convocation may by order limit or suspend his rights and privileges as a member for such time and on such terms as it considers proper in the circumstances. R.S.O. 1970, c. 238, s. 35.

Suspension
for failure
to pay
fees

36. If a member fails to pay any fee or levy payable by him to the Society within four months after the day on which payment is due, Convocation may by order suspend his rights and privileges as a member for such time and on such terms as it considers proper in the circumstances. R.S.O. 1970, c. 238, s. 36.

Reprimand
in committee
for
misconduct

37. If a committee of Convocation finds that a member has been guilty of professional misconduct or conduct unbecoming a barrister and solicitor which in its opinion does not warrant disbarment, suspension or reprimand in Convocation, the committee may by order reprimand him. R.S.O. 1970, c. 238, s. 37.

Student
members'
misconduct

38. If a student member is found after due inquiry by a committee of Convocation guilty of conduct unbecoming a student member, the committee may by order reprimand him or Convocation may by order cancel his student membership or may by order suspend his rights and privileges as a student member for a period to be named or may by order reprimand him or may by order make such other disposition as it considers proper in the circumstances. R.S.O. 1970, c. 238, s. 38.

Appeal to
Convocation

39.—(1) Any member who has been found guilty under section 37 or any student member who has been found guilty under section 38 and, in either case, has been ordered to be reprimanded in committee, may appeal from the order of reprimand to Convocation within fifteen days from the day upon which he is served with the order of the committee.

Procedure
and record

(2) An appeal under this section shall be by motion, notice of which shall be served upon the Secretary, and the record shall consist of a copy of the proceedings before the committee, the evidence taken, the committee's report and all decisions, findings and orders of the committee in the matter.

Orders

(3) Upon the hearing of an appeal under this section, Convocation may vary the punishment imposed by the committee or may refer the matter or any part thereof back to a committee with such directions as it considers proper or may make such order as it considers proper in the circumstances.

(4) No benchers who sat on the committee of Convocation when the order appealed from was made shall take any part in the hearing of the appeal in Convocation. Disqualification

(5) Subject to section 44, the decision of Convocation under this section is final and not subject to any further appeal. Decision final
R.S.O. 1970, c. 238, s. 39.

40. A person whose membership or student membership has been cancelled or whose rights and privileges as a member or student member have been suspended or who has been reprimanded may be ordered to pay the expense, or part of the expense, incurred by the Society in the investigation or hearing of any complaint in respect of which he has been found guilty. R.S.O. 1970, c. 238, s. 40. Expenses of investigations

41. Where it appears that disciplinary proceedings against a member or student member were unwarranted, Convocation may order that such costs as it considers just be paid by the Society to the member or student member whose conduct was the subject of the proceedings. R.S.O. 1970, c. 238, s. 41. Costs where disciplinary proceedings unwarranted

42.—(1) If the Treasurer or the Secretary or the chairman or the vice-chairman of any committee of Convocation dealing with disciplinary matters has reasonable cause to believe that a member has been or may be guilty of misconduct in connection with any property in his possession or under his control, a judge of the Supreme Court may, upon an *ex parte* application by the Society, order that the property described in the order shall not be paid out or dealt with by the person or persons named in the order without the leave of a judge of the Supreme Court. Stop-orders on members bank accounts, etc.

(2) Any person may apply to a judge of the Supreme Court for an order varying or discharging any order made under subsection (1). R.S.O. 1970, c. 238, s. 42. Discharge, etc., of stop-orders

43.—(1) Where a member or former member dies, disappears or leaves Ontario or a person's membership in the Society is cancelled or his rights and privileges as a member are suspended and, in any such event, his practice is neglected to the prejudice of any person or no provision has been made for the protection of his clients' interests, a judge of the Supreme Court may, upon an *ex parte* application by the Society, by order appoint a person as trustee, with or without bond, to take possession of any property in the possession of or under the control of such member or former member for the purpose of preserving, carrying on or winding up the practice of such member or former member. Appointment of trustees

Idem

(2) A person appointed under subsection (1) shall, in respect of any trust property of such member or former member, be the trustee thereof, and he shall in respect thereof take the place of the personal representative, committee or other representative, if any, of such member or former member.

Discharge,
etc., of
order

(3) Any person may apply to a judge of the Supreme Court for an order varying or discharging any order made under subsection (1).

Fees, etc.,
of trustee

(4) The judge may in any order under this section make provision for the remuneration, disbursements and indemnification of the trustee out of such moneys or otherwise as the judge may specify. R.S.O. 1970, c. 238, s. 43.

Appeal to
Divisional
Court

44.—(1) Any person dissatisfied with a decision of Convocation made under section 30, 32 or 46, or any person against whom an order has been made under section 34, 35 or 36, or any person against whom an order, other than an order of reprimand in committee, has been made under section 38, or any person whose punishment has been ordered to be increased under subsection 39 (3) may appeal from the decision or order to the Divisional Court in accordance with the rules of court within fifteen days from the day upon which he is served with the decision or order.

Certified
copies of
papers

(2) Upon the request of any person desiring to appeal and upon payment of the cost thereof, the Secretary shall furnish such person with a certified copy of all proceedings, evidence, reports, orders and papers received as evidence in Convocation and any committee thereof in dealing with and disposing of the matter complained of.

Failure to
pay costs

(3) If the appellant fails to pay the cost of the certified copy and the cost of such additional copies of the evidence as may be reasonably required for the purposes of the appeal within fifteen days after written demand from the Secretary, the appeal shall be deemed to be abandoned.

Procedure
and record

(4) An appeal under this section shall be by motion, notice of which shall be served upon the Secretary, and the record shall consist of a copy, certified by the Secretary, of the proceedings before Convocation or any committee thereof, the evidence taken, the report of Convocation or any committee thereof and all decisions, findings and orders of Convocation or any committee thereof in the matter.

Orders

(5) Upon the hearing of an appeal under this section, the Divisional Court may make such order as the court considers proper or

may refer the matter or any part thereof back to Convocation with such directions as the court considers proper.

(6) The Divisional Court may make such order as to the costs of the appeal as the court considers proper. R.S.O. 1970, c. 238, s. 44, *revised*. Costs

45.—(1) When a person's membership or student membership is cancelled, all his rights and privileges as a member or student member, as the case may be, cease, or, when a person's membership or student membership is suspended, the member or student member shall, during the period of suspension, possess no rights or privileges as a member or student member. Effect of
cancellation
and
suspension

(2) Where an appeal under section 44 is pending, the decision or order appealed against shall not thereby be stayed, but an application may be made to a judge of the Divisional Court for a stay of the decision or order pending the disposition of the appeal, and the judge may dispose of the application as he considers proper and in so doing he may impose such terms and conditions as he considers appropriate. R.S.O. 1970, c. 238, s. 45. Where
appeal
pending

46. Where a person's membership or student membership is cancelled, he may apply to be readmitted, and Convocation, after due inquiry by a committee thereof, may readmit him as a member or student member, as the case may be. R.S.O. 1970, c. 238, s. 46. Re-
admission

47. Where the rights and privileges of a member or student member are suspended for a definite or indefinite period, he may apply at any time to have his rights and privileges restored, and Convocation, after due inquiry by a committee thereof, may restore his rights and privileges as a member or student member, as the case may be. R.S.O. 1970, c. 238, s. 47. Termination
of suspension

48. Upon the readmission of a person as a member or student member or upon the termination of the suspension of the rights and privileges of a member or student member or upon the reprimand of a member or student member, Convocation or a committee thereof may impose upon him such terms and conditions as it considers proper. R.S.O. 1970, c. 238, s. 48. Terms and
conditions

49. Notice of admission to membership and of any cancellation, suspension, resignation, readmission or other change in Notice to
Registrar
of S.C.O.

a member's status in the Society shall be given forthwith by the Secretary to the Registrar of the Supreme Court who shall keep a record thereof. R.S.O. 1970, c. 238, s. 49.

PROHIBITIONS AND OFFENCES

Prohibition
as to
practice, etc.

50.—(1) Except where otherwise provided by law, no person, other than a member whose rights and privileges are not suspended, shall act as a barrister or solicitor or hold himself out as or represent himself to be a barrister or solicitor or practise as a barrister or solicitor.

Offence

(2) Every person who contravenes any provision of subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

Proceedings
to enjoin
person
convicted
from
practising
law

(3) Where a conviction has been made under subsection (2), the Society may apply to a judge of the Supreme Court by originating motion for an order enjoining the person convicted from practising as a barrister or solicitor, and the judge may make the order and it may be enforced in the same manner as any other order or judgment of the Supreme Court.

Discharge,
etc., of
order

(4) Any person may apply to a judge of the Supreme Court for an order varying or discharging any order made under subsection (3). R.S.O. 1970, c. 238, s. 50.

COMPENSATION FUND

Compensa-
tion Fund

51.—(1) The Society shall continue to maintain the fund known as "the Compensation Fund" and shall continue to hold it in trust for the purposes of this section.

Composition
of Fund

(2) The Compensation Fund shall be made up of,

- (a) all moneys paid by members of the Society under subsection (3);
- (b) all moneys earned from the investment of moneys in the Fund;
- (c) all moneys recovered under subsection (7); and
- (d) all moneys contributed by any person.

(3) Every member, other than those of a class exempted by the rules, shall pay to the Society for the Compensation Fund such sum as is prescribed from time to time by the rules. Compensation Fund levy

(4) The Society may insure with any insurer licensed to carry on business in Ontario for such purposes and on such terms as Convocation considers expedient in relation to the Compensation Fund, and, in such event, the moneys in the Fund may be used for the payment of premiums. Insurance

(5) Convocation in its absolute discretion may make grants from the Compensation Fund in order to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's law practice or in connection with any trust of which he was or is a trustee, notwithstanding that after the commission of the act of dishonesty he may have died or ceased to administer his affairs or to be a member. Grants

(6) No grant shall be made out of the Compensation Fund unless notice in writing of the loss is received by the Secretary within six months after the loss came to the knowledge of the person suffering the loss or within such further time, not exceeding eighteen months, as in any case may be allowed by Convocation. Conditions of grants

(7) If a grant is made under this section, the Society is subrogated to the amount of the grant to any rights or remedies to which the person receiving the grant was entitled on account of the loss in respect of which the grant was made against the dishonest member or any other person, or, in the event of the death or insolvency or other disability of such member or other person, against his personal representative or other person administering his estate. Subrogation

(8) A person to whom a grant is made under this section, or, in the event of his death or insolvency or other disability, his personal representative or other person administering his estate, has no right to receive anything from the dishonest member or his estate in respect of the loss in respect of which the grant was made until the Society has been reimbursed the full amount of the grant. Grantees' rights conditionally limited

(9) Where a grant has been made under this section and the dishonest member has been declared a bankrupt, the Society is entitled to prove against the bankrupt's estate for the full amount of the claim of the person to whom the grant was made and to receive all dividends on such amount until the Society has been reimbursed the full amount of the grant. Reimbursement from bankrupt's estate

Delegation
of powers
to committee
or referee
or both

(10) Convocation may delegate any of the powers conferred upon it by this section to a committee of Convocation and, whether or not Convocation has made any such delegation, it may appoint any member as a referee and delegate to him any of the powers conferred upon it by this section that are not delegated to a committee.

Reports

(11) Where Convocation has delegated any of its powers under this section to a committee or to a referee, the committee or referee, as the case may be, shall report as required to Convocation, but where there is a delegation to both a committee and a referee, the referee shall report as required to the committee.

Costs of
administra-
tion

(12) There may be paid out of the Compensation Fund the costs of its administration, including the costs of investigations and hearings and all other costs, salaries and expenses necessarily incidental to the administration of the Fund. R.S.O. 1970, c. 238, s. 51.

THE LAW FOUNDATION OF ONTARIO

Interpre-
tation

52. In this section and in sections 53, 54, 55, 56, 57, 58 and 59,

(a) "board" means the board of trustees of the Foundation;

(b) "Foundation" means The Law Foundation of Ontario referred to in section 53;

(c) "trustee" means a trustee of the board. 1973, c. 49, s. 3, *part*.

Foundation
continued

53.—(1) The corporation known as The Law Foundation of Ontario is continued as a corporation without share capital and shall consist of the trustees for the time being of the board.

Application of
R.S.O. 1980,
c. 95

(2) The *Corporations Act* does not apply to the Foundation. 1973, c. 49, s. 3, *part*.

Board of
trustees

54.—(1) The affairs of the Foundation shall be managed and controlled by a board of trustees consisting of five trustees of whom two shall be appointed by the Attorney General and three shall be appointed by the Society.

Quorum

(2) Three trustees constitute a quorum.

(3) Where there are not more than two vacancies in the membership of the board, the remaining trustees constitute the board for all purposes. ^{Vacancies}

(4) The trustees shall serve without remuneration, but each trustee is entitled to receive his actual disbursements for expenses incurred for any services rendered by him at the direction of the board. ^{Remuneration}

(5) The accounts and financial transactions of the Foundation shall be audited annually by an auditor or auditors appointed by the board. ^{Audit}

(6) The board shall make a report annually to the Attorney General on the activities of the Foundation, including the report of the auditor under subsection (5), and the Attorney General shall lay the report before the Assembly if it is in session or, if not, at the next ensuing session. 1973, c. 49, s. 3, *part*. ^{Annual report}

55.—(1) The objects of the Foundation are to establish and maintain a fund to be used for any or all of the following purposes: ^{Objects}

1. Legal education and legal research.
2. Legal aid.
3. The establishment, maintenance and operation of law libraries.

(2) The funds of the Foundation shall be derived from, ^{Derivation of funds}

- (a) moneys received from members under section 57;
- (b) gifts, bequests and devises referred to in section 56; and
- (c) moneys resulting from the use, disposal or investment of property received under clauses (a) and (b).

(3) The Board shall apply the funds of the Foundation for such of its purposes as the board considers appropriate, but at least 75 per cent of the net revenue received in each year under clause (2) (a) shall be paid to the Legal Aid Fund established under the *Legal Aid Act*. 1973, c. 49, s. 3, *part*. ^{Application of funds}

Powers of
Foundation
R.S.O. 1980,
c. 219

56.—(1) In addition to the powers and privileges mentioned in section 26 of the *Interpretation Act*, the Foundation has power,

- (a) to invest the funds of the Foundation in such classes of securities as trustees are authorized to invest trust funds;
- (b) to pay out of the funds of the Foundation the costs, charges and expenses necessarily incurred in the administration of the Foundation and in carrying out its objects;
- (c) to enter into agreements with any person and pay and apply any of its funds for the implementation of its objects.

Gifts,
devises,
etc.

(2) The Foundation has power to receive gifts, bequests and devises of property, real or personal, and to hold, use or dispose of such property in furtherance of the objects of the Foundation, subject to the terms of any trust affecting the same.

Idem

(3) Any form of words is sufficient to constitute a gift, bequest or devise to the Foundation so long as the person making the gift, bequest or devise indicates an intention to contribute presently or prospectively to the Foundation.

Powers of
the board

(4) The board may pass by-laws not contrary to this Act to achieve the objects of the Foundation and to regulate and govern its procedure and the conduct and administration of the affairs of the Foundation. 1973, c. 49, s. 3, *part*.

Trust funds
to bear
interest

57.—(1) Every member who holds money in trust for or on account of more than one client in one fund shall hold the money in an account at a chartered bank, provincial savings office or registered trust company, bearing interest at a rate approved by the trustees.

Interest
in trust

(2) The interest accruing on money held in an account referred to in subsection (1) shall be deemed to be held in trust for the Foundation.

Payment to
Foundation

(3) Every member to whom subsection (1) applies shall,

- (a) file reports with the Foundation as to the interest referred to in subsection (2); and
- (b) remit or cause to be remitted to the Foundation all interest moneys referred to in subsection (2),

in the manner and at the times prescribed by the regulations.

(4) Subject to subsection (5), a member is not liable, whether ^{Immunity .} as solicitor or as trustee, to account to any person as client or as settlor or beneficiary of the trust other than the Foundation, for interest on moneys held under subsection (1).

(5) Nothing in this section shall be deemed to affect, ^{Exceptions}

(a) any arrangement in writing between a member and the person for whom he holds money in trust as to the disposition of the interest accruing thereon; or

(b) any entitlement by a client to the interest accruing on money held in trust in an account separate from any other money. 1973, c. 49, s. 3, *part.*

58.—(1) The Society shall in each year report to the ^{Report by Society} Foundation the name and office or residence address shown by the records of the Society of every member who files a report with the Society that shows the member holds money on deposit in a trust account for or on account of clients.

(2) The Foundation may require a member whose name is ^{Report by member} contained in a report by the Society under subsection (1) to file a report with the Foundation stating whether or not the member has received or been credited with interest on moneys held by him in a trust account for or on account of clients. 1973, c. 49, s. 3, *part.*

59. Subject to the approval of the Lieutenant Governor ^{Regulations} in Council, the board may make regulations,

(a) governing the form, content and filing of the reports required under section 57;

(b) governing the time and manner of remitting the interest moneys referred to in section 57 to the Foundation;

(c) prescribing the form and the time of filing of reports required under section 58. 1973, c. 49, s. 3, *part.*

LEGAL EDUCATION; DEGREES

60.—(1) The Society may maintain the Bar Admission ^{Bar Admission Course} Course and programs of continuing legal education.

(2) The Society may grant degrees in law. R.S.O. 1970, ^{Law degrees} c. 238, s. 52.

INDEMNITY FOR PROFESSIONAL LIABILITY

Indemnity
for
professional
liability

61. The Society may make arrangements for its members respecting indemnity for professional liability and respecting the payment and remission of premiums in connection therewith and prescribing levies to be paid by members or any class thereof and exempting members or any class thereof from all or any part of any such levy. R.S.O. 1970, c. 238, s. 53.

RULES

Rules

62.—(1) Subject to section 63, Convocation may make rules relating to the affairs of the Society and, without limiting the generality of the foregoing,

1. providing procedures for the making, amendment and revocation of the rules;
2. prescribing the seal and the coat of arms of the Society;
3. providing for the execution of documents by the Society;
4. respecting the borrowing of money and the giving of security therefor;
5. fixing the financial year of the Society and providing for the audit of the accounts and transactions of the Society;
6. providing for the time and manner of and the methods and procedures for the election of benchers;
7. providing procedures for the election of the Treasurer, the filling of a vacancy in the office of Treasurer, the appointment of an acting Treasurer to act in the Treasurer's absence or inability to act, and prescribing the Treasurer's duties;
8. providing for the appointment of and prescribing the duties of the Secretary, one or more deputy secretaries and assistant secretaries and such other officers as are considered appropriate;
9. respecting Convocation;
10. providing for the establishment, composition, jurisdiction and operation of standing and other committees and delegating to any committee such of the powers and duties of Convocation as may be considered expedient;

11. governing honorary benchers, *ex officio* benchers and honorary members and prescribing their rights and privileges;
12. governing members, life members and student members, and prescribing their rights and privileges;
13. prescribing fees and levies for members and student members or any class of either of them, and providing for the payment and remission thereof and exempting any class of either of them from all or any part of such fees or levies;
14. respecting the Compensation Fund and prescribing the amount of the levy to be paid to the Society for the Fund and exempting any class of members from all or any part of such levy;
15. prescribing oaths for members and student members;
16. providing for the payment to the Society by any member of the cost of any investigation or audit of his books, records, accounts and transactions;
17. providing for and governing meetings of members or representatives of members;
18. prescribing procedures for the call to the bar of barristers and the admission and enrolment of solicitors;
19. defining and governing the employment of student members while under articles;
20. providing and governing bursaries, scholarships, medals and prizes;
21. providing for and governing extension courses, continuing legal education, and legal research;
22. governing degrees in law;
23. providing for and governing libraries;
24. providing for the occasional appearance as counsel in the courts of Ontario and before provincial judges, with the consent of the Treasurer and of the court or judge, of members of the legal profession from outside Ontario;

25. providing for the establishment, maintenance and administration of a benevolent fund for members and the dependants of deceased members;
26. prescribing forms and providing for their use, except the form of summons referred to in subsection 33 (10).

Interpreta-
tion of rules

- (2) The rules made under subsection (1) shall be interpreted as if they formed part of this Act. R.S.O. 1970, c. 238, s. 54 (1, 2).

Availability
of copies of
rules

- (3) A copy of the rules made under subsection (1), as amended from time to time,

- (a) shall be filed in the office of the Attorney General; and
- (b) shall be available for public inspection in the office of the Secretary. R.S.O. 1970, c. 238, s. 54 (3); 1972, c. 1, s. 9 (7).

REGULATIONS

Regulations

63. -Subject to the approval of the Lieutenant Governor in Council, Convocation may make regulations respecting any matter that is outside the scope of the rule-making powers specified in section 62 and, without limiting the generality of the foregoing,

1. respecting any matter ancillary to the provisions of this Act with regard to the admission, conduct and discipline of members and student members and the suspension and restoration of their rights and privileges, the cancellation of memberships and student memberships, the resignation of members, and the readmission of former members and student members;
2. requiring and prescribing the books, records and accounts to be kept by members and providing for the exemption from such requirements of any class of members;
3. requiring and providing for the examination or audit of members' books, records, accounts and transactions and the filing with the Society of reports with respect thereto;
4. authorizing and providing for the preparation, publication and distribution of a code of professional conduct and ethics;

5. respecting the reporting and publication of the decisions of the courts;
6. defining and governing the employment of barristers and solicitors clerks;
7. respecting legal education, including the Bar Admission Course;
8. providing for the establishment, operation and dissolution of county and district law associations and respecting grants and loans to such associations;
9. prescribing the form of the summons referred to in subsection 33 (10). R.S.O. 1970, c. 238, s. 55.

CHAPTER 234

Legal Aid Act

1. In this Act,Interpre-
tation

- (a) “area” means a part of Ontario designated by the regulations as an area for the purposes of this Act;
- (b) “area director” means an area director appointed under this Act;
- (c) “assessment officer” means an officer of the Ministry of Community and Social Services who is designated by the Minister of Community and Social Services as an assessment officer for the purposes of this Act;
- (d) “barrister and solicitor” means a member of the Law Society other than an honorary member or a student member thereof;
- (e) “certificate” means a legal aid certificate or a provisional legal aid certificate issued under this Act;
- (f) “Director” means the Director of Legal Aid appointed under this Act;
- (g) “Fund” means the Legal Aid Fund under this Act;
- (h) “Law Society” means The Law Society of Upper Canada;
- (i) “legal aid” means professional services provided under this Act and the regulations;
- (j) “person” means an individual;
- (k) “regulations” means the regulations made under this Act;
- (l) “student” means a person enrolled in the Bar Admission Course or in any law course approved by the Law Society;
- (*m*) “student legal aid society” means a student legal aid society established in accordance with the regulations;

- (n) "Treasurer" means the Treasurer of the Law Society. R.S.O. 1970, c. 239, s. 1; 1972, c. 1, s. 19 (3).

Operation
of plan

2. Subject to the approval of the Attorney General, the Law Society is hereby empowered to establish and administer a legal aid plan in accordance with this Act and the regulations. R.S.O. 1970, c. 239, s. 2; 1972, c. 1, s. 9 (7).

Appoint-
ment of
Director,
area
directors,
and staff

3.—(1) Subject to the approval of the Attorney General, the Law Society shall,

- (a) appoint a Director of Legal Aid;
- (b) appoint an area director for each area; and
- (c) employ such other persons as it considers necessary. R.S.O. 1970, c. 239, s. 3 (1); 1972, c. 1, s. 9 (7).

Accommoda-
tion, etc.

(2) The Law Society shall provide such office accommodation, furniture, equipment and supplies as it considers necessary. R.S.O. 1970, c. 239, s. 3 (2).

Area
legal aid
committees

4.—(1) The Law Society may appoint a legal aid committee for an area.

Composition,
etc.

(2) Each committee shall be composed of such number of members, shall be organized, and shall perform such functions, as the regulations prescribe.

Secretary

(3) The area director shall act as secretary of the area committee. R.S.O. 1970, c. 239, s. 4.

Legal Aid
Fund,
payments in

5.—(1) The Law Society shall,

- (a) establish and maintain a fund to be known as the Legal Aid Fund into which shall be paid all moneys appropriated by the Legislature for the Fund, all moneys payable by The Law Foundation of Ontario, all costs awarded to recipients of legal aid, and all contributions made by recipients of legal aid who are required to pay any part of its cost; and
- (b) keep such accounts and records of the transactions of the Fund as the regulations prescribe. R.S.O. 1970, c. 239, s. 5 (1), *revised*.

(2) The Law Society shall, subject to the regulations, pay^{payments out} out of the Fund,

(a) its expenses attributable to the administration of this Act and the regulations, including,

(i) the expenses of the Treasurer and benchers and the expenses and allowances of members of committees,

(ii) the cost of office accommodation, furniture, equipment and supplies,

(iii) the salaries and expenses of the Director, area directors and other persons employed by the Law Society in the administration of this Act, and

(iv) the employer's contributions to any super-annuation or pension plan that benefits the persons employed by the Law Society in the administration of this Act or to which such persons may contribute;

(b) the fees and proper out-of-pocket disbursements of barristers and solicitors for legal aid;

(c) any refund authorized by this Act of any contribution to the Fund;

(d) the fees and proper out-of-pocket disbursements of duty counsel; and

(e) audit fees. R.S.O. 1970, c. 239, s. 5 (2).

6. The Law Society shall, at least once in every fiscal^{Estimates} year of the Government of Ontario at such time as the Attorney General directs, submit to him an estimate of the sum required to meet the payments out of the Fund during the next succeeding fiscal year of the Government of Ontario after making allowance for the moneys that are estimated will be received from other sources. R.S.O. 1970, c. 239, s. 6; 1972, c. 1, s. 9 (7).

7.—(1) The moneys required for the purposes of this Act^{Moneys} shall be paid out of moneys appropriated by the Legislature for the purposes of this Act. R.S.O. 1970, c. 239, s. 7 (1).

(2) The moneys required for the purposes of this Act shall be paid to the Law Society by the Treasurer of Ontario and Minister of Economics from time to time upon the requisition of the Law Society. R.S.O. 1970, c. 239, s. 7 (2); 1972, c. 3, s. 17 (1).

Auditor

8. The Provincial Auditor shall examine and report upon the accounts and financial transactions of the Fund. R.S.O. 1970, c. 239, s. 8.

Advisory
committee

9.—(1) There shall be an advisory committee on legal aid composed of,

- (a) a judge of the Supreme Court;
- (b) a judge of a county or district court;
- (c) a provincial judge;
- (d) two members of the bar of Ontario;
- (e) a person holding a responsible position in the field of public welfare; and
- (f) such other persons,

as the Attorney General may appoint. R.S.O. 1970, c. 239, s. 9 (1); 1972, c. 1, s. 9 (7).

Term of
office

(2) Each member of the committee shall serve for a term of one, two or three years and may be reappointed on the expiry of the period for which he was appointed. R.S.O. 1970, c. 239, s. 9 (2).

Report

(3) The committee shall report at least once in every year to the Attorney General,

- (a) on the operation of the legal aid plan; and
- (b) on the annual report of the Law Society to the Attorney General mentioned in section 10. R.S.O. 1970, c. 239, s. 9 (3); 1972, c. 1, s. 9 (7).

Annual
report

10. The Law Society shall make a report annually to the Attorney General for the twelve months ending on the 31st day of March of the year in which the report is made containing,

- (a) a statement of the nature and amount of legal aid given during the year;
- (b) a statement of the receipts and disbursements of the Fund during the year;
- (c) a copy of the auditor's report for the year;

- (d) general information as to the working of this Act and the regulations; and
- (e) such other information as the Attorney General requests. R.S.O. 1970, c. 239, s. 10; 1972, c. 1, s. 9 (7).

11. The Attorney General shall submit the reports mentioned in sections 9 and 10 to the Lieutenant Governor in Council and shall then lay such reports before the Assembly if it is in session or, if not, at the next ensuing session. R.S.O. 1970, c. 239, s. 11; 1972, c. 1, s. 9 (7).

12.—(1) Except as otherwise provided in this Act or the regulations, a certificate shall be issued to a person otherwise entitled thereto in respect of any proceeding or proposed proceeding, Where legal aid may be given

(a) in the Supreme Court;

(b) in a county or district court;

(c) in a surrogate court;

(d) where the applicant is charged with an indictable offence or where an application is made for a sentence of preventive detention under Part XXI of the *Criminal Code* (Canada);

R.S.C. 1970,
c. C-34

(e) under the *Extradition Act* (Canada) or the *Fugitive Offenders Act* (Canada); and

R.S.C. 1970,
cc. E-21, F-32

(f) in the Federal Court of Canada.

(2) For the purpose of clause (1) (d), an offence that may be tried on indictment or on summary conviction shall be deemed to be an offence triable on summary conviction until such time as the prosecution elects to proceed on indictment. R.S.O. 1970, c. 239, s. 12. Assumption

13. Subject to the discretion of the area director, a certificate may be issued to a person otherwise entitled thereto, Certificate, subject to discretion of area director

(a) in any summary conviction proceeding under an Act of the Parliament of Canada;

(b) in any proceeding under the *Provincial Offences Act*,

R.S.O. 1980,
c. 400

if upon conviction there is likelihood of imprisonment or loss of means of earning a livelihood;

(c) in any proceeding,

(i) in a provincial court (family division),

(ii) in a small claims court,

(iii) before a quasi-judicial or administrative board or commission otherwise than in an appeal thereto,

(iv) in bankruptcy subsequent to a receiving order or an authorized assignment, or

(v) for contempt of court; or

(d) for drawing documents, negotiating settlements or giving legal advice wherever the subject-matter or nature thereof is properly or customarily within the scope of the professional duties of a barrister and solicitor. R.S.O. 1970, c. 239, s. 13; 1972, c. 1, s. 104 (6), *revised*.

Certificate,
with approval
of area
legal aid
committee

14.—(1) Subject to the approval of the area legal aid committee, a certificate may be issued to a person otherwise entitled thereto,

(a) in an appeal,

(i) to the Supreme Court of Canada,

(ii) to the Federal Court of Canada,

(iii) to the Court of Appeal for Ontario,

(iv) to the Divisional Court,

(v) to a judge sitting in court,

(vi) under Part XXIV of the *Criminal Code* (Canada) or the *Provincial Offences Act*,

(vii) to the Assessment Review Court from a municipal assessment of a property that is the residence of the applicant and by way of appeal from the decision of the Assessment Review Court thereon to the judge

R.S.C. 1970,
c. C-34
R.S.O. 1980,
c. 400

of a county or district court and by way of appeal from the decision of such judge to the Ontario Municipal Board, or

(viii) to a quasi-judicial or administrative board or commission; or

(b) in a proceeding by way of mandamus, quo warranto, certiorari, motion to quash, habeas corpus, or prohibition; and

(c) in any matter referred by the area director to the area committee.

(2) An application for legal aid in a proceeding under this section shall be made to the area director in the prescribed form, and the area director shall submit the application and supporting material to the area legal aid committee. Procedure

(3) The area legal aid committee shall consider the application and the supporting material and provide legal aid only if in the opinion of the committee the issue of a certificate is justified. Idem

(4) An appeal lies to the Director from a decision of the area legal aid committee dismissing an application under this section. Appeal

(5) Failure to apply for legal aid in the first instance does not bar an application for legal aid under this section. Later applications not barred
R.S.O. 1970, c. 239, s. 14.

15. A certificate shall not be issued to a person,

Where
legal aid
not to be
given

(a) in proceedings wholly or partly in respect of defamation or loss of service of a female in consequence of rape;

(b) in relator actions;

(c) in proceedings for the recovery of a penalty where the proceedings may be taken by any person and the penalty in whole or in part may be payable to the person instituting the proceedings; or

(d) in proceedings relating to any election. R.S.O. 1970, c. 239, s. 15, *revised*.

Applications

16.—(1) Every application for legal aid shall be made in the prescribed form addressed to the area director of the area in which the applicant resides at the time the application is made or in which the occurrence for which legal aid is required took place.

Reference to
assessment
officer

(2) Except where the legal aid for which an application is made is estimated by the area director to whom the application is made to cost not more than \$60 and he after investigation is satisfied that the applicant can pay no part thereof, every application for legal aid shall be referred by the area director to an assessment officer for a report as to whether the applicant can pay no part, some part, or the whole of the cost of the legal aid applied for.

Function of
assessment
officer

(3) The assessment officer to whom an application is referred shall consider the income, disposable capital, indebtedness, requirements of persons dependent on the applicant, and such other circumstances as he considers to be relevant that are disclosed in the application or that he ascertains after investigation, and he shall report to the area director as to whether the applicant can pay no part, some part or the whole of the cost of the legal aid applied for and the sum, if any, the applicant is able to contribute towards the cost thereof.

Oaths

R.S.O. 1980,
c. 75

(4) Every assessment officer is in the performance of his duties under this Act a commissioner for taking affidavits within the meaning of the *Commissioners for taking Affidavits Act*.

When
certificate
may issue

(5) Subject to subsections (2) and (6) and whether or not a provisional certificate has been issued, the area director may issue a certificate only when he has received the report of the assessment officer and only where in the opinion of the area director the issue of a certificate is justified.

Provisional
certificate
in excep-
tional cases

(6) Where in the opinion of the area director the circumstances of an application require the issue of a certificate immediately, he may issue a provisional certificate without having first received the report of the assessment officer.

Terms and
conditions

(7) An area director in issuing a certificate or provisional certificate may impose such terms and conditions as he deems proper.

Cancellation

(8) An area director may at any time cancel any certificate or provisional certificate issued by him.

(9) An application for legal aid by a person not ordinarily resident in Ontario shall be disposed of by the Director. Applications of non-residents

(10) An appeal lies to the area committee from the refusal of the area director to issue a certificate or from a cancellation of a certificate and a further appeal lies to the Director at the instance of the area director from the decision of the area committee allowing an appeal under this subsection. Appeals

(11) The Director may issue a certificate to an appellant or respondent in a criminal appeal where the Supreme Court of Canada or the Court of Appeal for Ontario is of the opinion that it is desirable in the interests of justice that the appellant or respondent should be represented and has requested that counsel be appointed and the Director is satisfied that the appellant or respondent has not sufficient means to employ counsel. R.S.O. 1970, c. 239, s. 16. Certificate upon request of court

17.—(1) The sum that a person is able to contribute towards the cost of legal aid given to him as set out in his certificate shall be paid by him and is a debt owing to the Law Society and may be recovered in any court of competent jurisdiction. Recovery of contributions

(2) Where a person who has been given legal aid in any matter recovers any sum in respect of such matter under a judgment, order, settlement or otherwise, the costs payable under this Act and the regulations are a charge against the sum so recovered and shall be deducted therefrom and paid into the Fund. Charge on sum recovered

(3) Where a person who has been given legal aid in any matter recovers property other than money, the Law Society has a charge against the property so recovered for the costs payable under this Act and the regulations and may enforce such charge. Charge on property recovered

(4) A person who has been given legal aid in any matter shall be refunded any money received or recovered by the Fund for costs in excess of such costs. R.S.O. 1970, c. 239, s. 17. Refunds

18.—(1) Where a person who owns or has any interest in any land in Ontario has agreed to contribute towards the cost of legal aid given to him as set out in his certificate, the area director who issued the certificate may deliver or transmit a certificate of lien in duplicate in the form prescribed by the regulations to the sheriff of the county or district in which the land mentioned therein is situate and, if the area director does so, he shall also deliver or transmit a copy thereof to the Director. Delivery of certificate of lien to sheriff

Endorsement
and entry in
index book

(2) Upon receipt of a certificate of lien under subsection (1), the sheriff shall, without fee, endorse thereon the day of the year, the month, the hour and the minute of its receipt and shall enter in an alphabetically-arranged index book kept for the purpose the name of the contributor shown on the certificate.

Lien on
land,
registry
system

(3) As soon as the endorsement and entry have been made under subsection (2) and the land mentioned in the certificate is in the registry system, the Law Society on behalf of the Fund has a lien against the contributor's land mentioned in the certificate for an amount equal to the amount that he agreed to contribute towards the cost of the legal aid given to him as shown in the certificate, to the extent that such amount remains unpaid from time to time.

Delivery
of copy
to land
registrar

(4) As soon as the endorsement and entry have been made under subsection (2) and the land mentioned in the certificate is in the land titles system, the sheriff shall deliver or transmit to the proper land registrar a copy of the certificate, and the land registrar, upon receipt of the copy of the certificate, shall, without fee, endorse thereon the day of the year, the month, the hour and the minute of its receipt and shall enter in an alphabetically-arranged index book kept for the purpose the name of the contributor shown on the certificate.

Lien on
land,
land titles
system

(5) As soon as the endorsement and entry have been made under subsection (4), the Law Society on behalf of the Fund has a lien against the contributor's land mentioned in the certificate for an amount equal to the amount that he agreed to contribute towards the cost of the legal aid given to him as shown in the certificate, to the extent that such amount remains unpaid from time to time.

Execution
certificates

(6) Where a certificate respecting execution against land is required from a sheriff or land registrar, he shall, without additional fee, include in the execution certificate a statement as to whether there is a name shown in the index book mentioned in subsection (2) or (4), as the case may be, that is the same as the name shown on the certificate.

Discharge
of lien

(7) As soon as a contributor has discharged his obligation to contribute towards the cost of the legal aid given to him, the lien mentioned in this section is discharged, and the Director shall deliver or transmit a certificate of discharge in duplicate in the form prescribed by the regulations to the sheriff to whom the certificate of lien was delivered or transmitted.

(8) Upon receipt of a certificate of discharge, the sheriff ^{Duty of sheriff} shall attach the certificate of discharge to the proper certificate of lien and strike the name of the contributor from the index book kept pursuant to subsection (2).

(9) Where the land mentioned in a certificate of discharge ^{Duty of land registrar} is under the land titles system, the sheriff, upon receipt of a certificate of discharge, shall deliver or transmit to the proper land registrar a copy of the certificate of discharge and, upon receipt of the copy of the certificate of discharge, the land registrar shall attach the copy of the certificate of discharge to the proper certificate of lien and strike the name of the contributor from the index book kept pursuant to subsection (4). R.S.O. 1970, c. 239, s. 18.

19. The costs awarded in any order heretofore or hereafter ^{Costs} made in favour of a person to whom legal aid has been given are recoverable in the same manner and to the same extent as though awarded to a person to whom legal aid has not been given notwithstanding that no amount has been paid or is or will be payable for costs by such legally-aided person in whose favour the order is made or that costs so ordered are in excess of the total amount paid or payable for costs by such legally-aided person, and all costs paid or payable to such legally-aided person pursuant to any such order are the property of the Law Society and shall be paid into the Fund. R.S.O. 1970, c. 239, s. 19.

20. Except as to the professional services provided by ^{No legal aid without certificate} duty counsel, no person is entitled to legal aid in any matter unless he holds a certificate or a provisional certificate respecting such matter that has been issued to him in accordance with this Act and the regulations. R.S.O. 1970, c. 239, s. 20.

21. There may be established in accordance with the ^{Legal panels} regulations,

- (a) panels of barristers and solicitors who agree to give legal aid;
- (b) panels of barristers and solicitors who agree to provide professional services as duty counsel;
- (c) panels of barristers and solicitors who agree to give legal advice; and
- (d) student legal aid societies. R.S.O. 1970, c. 239, s. 21.

Payment for
professional
services

22.—(1) Every barrister and solicitor who provides professional services under this Act shall be paid out of the Fund an amount equal to three-fourths of the fees for services rendered as determined by the regulations and an amount equal to his proper out-of-pocket disbursements in the matter in which legal aid was given.

Appeals

(2) An appeal lies in accordance with the regulations to the Taxing Officer at Toronto from the certificate of a person designated for the purposes of clause 26 (1) (l).

Further
appeal

(3) A further appeal lies in accordance with the regulations to a judge of the High Court from the decision of the Taxing Officer and the order of the judge disposing of the appeal is final. R.S.O. 1970, c. 239, s. 22.

Authorized
payments
only

23.—(1) Except in accordance with this Act and the regulations, no barrister and solicitor or student shall take or receive any payment or other benefit in respect of any professional services provided by him under this Act or the regulations.

Members of
the Assembly
R.S.O. 1980,
c. 235

(2) Notwithstanding the *Legislative Assembly Act*, the receipt of fees by a member of the Assembly for providing professional services under this Act does not affect his eligibility as a member of the Assembly or his right to sit or vote therein. R.S.O. 1970, c. 239, s. 23.

Law Society
not liable

24. The Law Society is not liable for any act or omission of any barrister and solicitor who provides professional services under this Act or the regulations. R.S.O. 1970, c. 239, s. 24.

Privileged
communica-
tions

25. All communications between the Director, an area director, a member of an area legal aid committee or an assessment officer, on the one hand, and an applicant for or a recipient of legal aid, on the other hand, are privileged for the purposes of the rules of evidence in the same manner and to the same extent as solicitor-client communications. R.S.O. 1970, c. 239, s. 25.

Regulations

26.—(1) Subject to the approval of the Lieutenant Governor in Council, the Law Society may make regulations respecting the establishment and administration of a legal aid plan and, without limiting the generality of the foregoing, may make regulations, .

(a) prescribing the functions of the Director, the area directors and other persons employed for the purposes of this Act;

- (b) prescribing the accounts and records that shall be kept of the transactions of the Fund;
- (c) respecting the payment out of the Fund of the expenses of the Law Society attributable to the administration of this Act and the regulations;
- (d) designating parts of Ontario as areas for the purposes of this Act;
- (e) providing for committees, their composition and organization, and prescribing their functions;
- (f) respecting the establishment and functions of the panels and societies mentioned in section 21;
- (g) respecting the participation of students in legal aid;
- (h) respecting applications for legal aid;
- (i) respecting entitlement to legal aid;
- (j) respecting certificates and provisional certificates;
- (k) respecting the fees to be paid to barristers and solicitors for professional services under this Act or the regulations;
- (l) providing for the settlement of accounts for professional services under this Act or the regulations;
- (m) respecting appeals under sections 14, 16 and 22;
- (n) prescribing oaths of office and secrecy and requiring persons, or any class thereof, engaged in the administration of this Act to take and subscribe such oaths or either of them;
- (o) respecting the non-disclosure of information furnished by or about an applicant for or recipient of legal aid;
- (p) providing for the settlement, recovery and payment into the Fund of costs and other moneys due to the Fund;
- (q) providing for the payment out of the Fund of costs awarded against a person to whom legal aid has been given;

(r) prescribing forms and providing for their use. R.S.O. 1970, c. 239, s. 26 (1).

Designation
by Attorney
General

(2) The Attorney General may designate persons for the purposes of clause (1) (l). R.S.O. 1970, c. 239, s. 26 (2); 1972, c. 1, s. 9 (7).

Application
of regulation

(3) A regulation may be limited in its scope and may be retroactive in its operation. R.S.O. 1970, c. 239, s. 26 (3).

CHAPTER 235

Legislative Assembly Act

1. The Assembly shall be composed of as many members as is fixed from time to time by the *Representation Act*. R.S.O. 1970, c. 240, s. 1. Assembly, how composed R.S.O. 1980, c. 450

2.—(1) The Legislature shall not determine or be dissolved by the demise of the Crown, but shall continue, and may meet, convene and sit, proceed and act, in the same manner as if such demise had not happened. Demise of the Crown

(2) Nothing in this section alters or abridges the power of the Crown to prorogue or dissolve the Legislature. R.S.O. 1970, c. 240, s. 2. Power to prorogue or dissolve not affected

3. Every Legislature shall continue for five years from the fifty-fifth day after the date of the writs for the election and no longer, subject to being sooner dissolved by the Lieutenant Governor. R.S.O. 1970, c. 240, s. 3. Duration of Legislature

4. There shall be a session of the Legislature once at least in every year, so that twelve months do not intervene between the last sitting of the Legislature in one session and its first sitting in the next. R.S.O. 1970, c. 240, s. 4. Yearly session

5. It is not necessary for the Lieutenant Governor in proroguing the Legislature to name a day to which it is prorogued, nor to issue a formal proclamation for a meeting of the Legislature when it is not intended that the Legislature shall meet for despatch of business. R.S.O. 1970, c. 240, s. 5. Prorogation

6.—(1) Subject to subsection (2), the persons qualified to sit and vote as members of the Assembly are any male or female persons of the full age of eighteen years who are British subjects by birth or by naturalization under the laws of Canada from time to time in force, resident in Ontario and not disqualified by this or any other Act from election to the Assembly. R.S.O. 1970, c. 240, s. 6 (1); 1971, c. 98, s. 4. Qualification of members

(2) For the purposes of this Act, a female person shall be deemed to be a British subject, Where women deemed British subjects

- (a) if she was born a British subject and is unmarried, or is married to a British subject and has not become a subject of a foreign power; or
- (b) if she has herself been personally naturalized as a British subject and has not since become a subject of a foreign power; or
- (c) if she has become a British subject by marriage or by the naturalization as a British subject of her parent while she was a minor, and in either case has done nothing to forfeit or lose her status as a British subject, and has obtained a certificate under the signature of a judge of the Supreme Court or of a county or district court, and the seal of the court, certifying that she is of the full age of eighteen years, has resided in Canada a sufficient length of time and is possessed of all requirements necessary to entitle her, if unmarried, to become naturalized as a British subject, and that she has taken the oath of allegiance to Her Majesty. R.S.O. 1970, c. 240, s. 6 (2).

Senators
and members
of House of
Commons
disqualified

7.—(1) No person who on the day of nomination for election to the Assembly is a member of the Senate of Canada or of the House of Commons of Canada is eligible as a member of the Assembly or shall be returned as elected thereto, and if any such person receives a majority of votes at an election, the votes cast for him shall be thrown away and the returning officer shall return the person having the next greatest number of votes if he is otherwise eligible.

Vacation
of seat

(2) If a member of the Assembly is elected and returned to the House of Commons of Canada or is appointed to the Senate of Canada, his seat in the Assembly is thereupon vacated and a writ shall issue forthwith for a new election to fill the vacancy. R.S.O. 1970, c. 240, s. 7.

Disqualifica-
tion of
persons
holding
office under
Crown

8.—(1) Except as hereinafter specially provided, no person accepting or holding any office, commission or employment in the service of the Government of Canada, or of the Government of Ontario at the nomination of the Crown or at the nomination of any of the officers of the Government of Canada or of the Government of Ontario to which any salary, fee, wage, allowance, emolument or profit of any kind is attached is eligible as a member of the Assembly or shall sit or vote therein. R.S.O. 1970, c. 240, s. 8 (1).

(2) Nothing in this section renders ineligible as aforesaid ^{Exceptions} or disqualifies from sitting and voting in the Assembly when not otherwise disqualified,

- (a) a member of the Executive Council or a Parliamentary Assistant;
- (b) an officer or other member of the regular force or reserve force of the Canadian Forces;
- (c) a justice of the peace, coroner, notary public or public school supervisory officer;
- (d) any person holding any temporary employment in the service of the Government of Canada requiring special qualifications or professional skill, or a commissioner appointed under the *Inquiries Act* ^{R.S.C. 1970, c. I-13} (Canada);
- (e) a member of any commission, board, committee or other body holding office at the nomination of the Lieutenant Governor in Council, but this clause does not apply to members of the Ontario Labour Relations Board, The Liquor Licence Board of Ontario, the Ontario Municipal Board, the Workmen's Compensation Board, the Ontario Securities Commission, The Milk Commission of Ontario, the Civil Service Commission, or the Board of Parole. R.S.O. 1970, c. 240, s. 8 (2); 1972, c. 1, s. 4 (1).

9.—(1) Subject to subsection (2), a member of the Assembly is not eligible to hold office as a member of the council of a municipality, including a district, metropolitan or regional municipality, or as a member of a local board, as defined in the *Municipal Affairs Act*, of such a municipality. <sup>Member of Assembly not eligible to hold municipal office
R.S.O. 1980, c. 303</sup>

(2) Every person who is elected a member of the Assembly while holding an office referred to in subsection (1) may continue to hold such office, notwithstanding any other Act, until the end of the day on which the return of the election of such person to the Assembly is published in *The Ontario Gazette* under section 130 of the *Election Act*, at which time he shall be deemed to have resigned such office. 1972, c. 131, s. 1, *part.* <sup>Member deemed to have resigned municipal office when election to Assembly published
R.S.O. 1980, c. 133</sup>

10. Except as authorized by resolution of the Assembly, no person holding or enjoying, undertaking or executing, ^{Disqualification of public contractors}

directly or indirectly, alone or with another, by himself or by the interposition of a trustee or third person, any contract or agreement with Her Majesty, or with any public officer or ministry, with respect to the public service of Ontario, or under which any public money of Ontario is to be paid for any service, work, matter or thing, is eligible as a member of the Assembly or shall sit or vote therein. R.S.O. 1970, c. 240, s. 9; 1972, c. 1, s. 2.

Exceptions: **11.**—(1) No person is ineligible as a member of the Assembly,

trustees for
estates of
contractors

(a) by reason of his being interested as an executor, administrator or trustee only, having otherwise no beneficial interest in any such contract or agreement;

share-
holders in
contracting
companies

(b) by reason of his being a shareholder or stockholder in an incorporated company having any such contract or agreement, unless such contract or agreement is for the building of a public work of Ontario, and such building or work has not been let by tender to the lowest bidder;

lenders of
money to
Government

(c) by reason of his being a contractor for the loan of money or for securities for the payment of money to the Government of Ontario under the authority of the Legislature after public competition or respecting the purchase or payment of the public stock or debentures of Ontario on terms common to all persons;

holders of
mining
licences, etc.

(d) by reason of his being the holder of a mining licence or having a contract or agreement with Her Majesty or with any public officer or ministry with respect to the same or to mines or mining rights, but no such person shall vote on any question affecting such licence, contract or agreement or in which he is interested by reason thereof;

owners and
persons
interested
in certain
newspapers

(e) by reason of his being proprietor of or otherwise interested in a newspaper or other periodical publication in which official advertisements are inserted which appear in other newspapers or publications in Ontario, or which is subscribed for by the Government of Ontario, or any ministry thereof, or by any of the public institutions of Ontario, unless such advertisements or subscriptions are paid for out of the public moneys of Ontario at rates greater than usual rates;

- (f) by reason of his holding a licence, permit or permission for cutting timber, or being interested in any such licence, permit or permission, directly or indirectly, alone or with another, by himself or by the interposition of a trustee or third person, or by reason of there being money due or payable to Her Majesty in respect of timber cut, but no such person shall vote on any question affecting such licence, permit or permission or in which he is interested by reason thereof; ^{timber licensees}
- (g) by reason of his being the holder of a fishery licence, or having a contract or agreement with Her Majesty or with any public officer or ministry with respect to the same or to fisheries or fishing rights, but no such person shall vote on any question affecting such licence, contract or agreement or in which he is interested by reason thereof; ^{fishery licensees}
- (h) by reason of his being a surety or contractor or liable for the payment of money for or on account of the maintenance or tuition of an inmate or pupil of any Government institution; ^{certain sureties or obligors}
- (i) by reason of his being a postmaster elsewhere than in a city, town or incorporated village, or interested in a contract for carrying the mail between two or more post offices neither of which is in a city, town or incorporated village or of his being the surety of any such postmaster or contractor; ^{certain postmasters and mail carriers}
- (j) by reason of his receiving or having received or agreed to receive compensation with respect to any property taken or purchased by the Crown or by any ministry or commission of the Government of Ontario or with respect to any interest in such property where the amount of such compensation has been fixed by an award made under the *Ministry of Government Services Act* or any other general or special Act of the Legislature, or has been agreed upon and the judge of the county or district in which the property is situate has certified in writing that the amount of compensation is fair and reasonable, but no such person shall vote on any question arising in the Assembly touching such matter; ^{receipt of compensation for land not to disqualify} R.S.O. 1980, c. 279
- (k) by reason of his being a surety for a public officer or Ontario land surveyor or other person required by law to furnish security to the Crown; ^{sureties of public officers}

burial of
indigents

- (l) by reason of having received payment from the Crown for the burial of indigents who were resident in territory without municipal organization;

pensions

R.S.O. 1980,
cc. 236, 418,
419, 494

- (m) by reason of his being entitled to or in receipt of any money under the *Legislative Assembly Retirement Allowances Act*, the *Public Service Act*, the *Public Service Superannuation Act* or the *Teachers' Superannuation Act* or under any other Act of the Legislature or the Parliament of Canada that provides a pension, annuity, allowance or other similar payment that is made up in whole or in part of public money;

benefits
common
to others

- (n) by reason of his being entitled to receive on terms common to all persons similarly entitled and of his receiving or agreeing to receive in accordance with such entitlement any service or commodity or any refund, rebate, subsidy, loan or any other such benefit or payment that is authorized under any Act. R.S.O. 1970, c. 240, s. 10 (1); 1972, c. 1, s. 2.

Duty of
sureties who
have been
elected

- (2) A person elected a member of the Assembly who is at the time of his election a surety as aforesaid shall, before he sits or votes therein, take and complete such action as may be requisite to relieve him from any thereafter accruing liability in respect of his suretyship, and no person who is liable as such surety in respect of any accruing matter shall sit or vote in the Assembly. R.S.O. 1970, c. 240, s. 10 (2).

When
disqualifica-
tion to
become
operative

- 12.** No disqualification under section 8 or 10 on any ground arising before the election shall be held by any court to affect the seat of a member of the Assembly or to disentitle any person to sit or vote therein until the disqualification has been duly found and declared by an election court, but this is not to be construed as affecting the cases provided for by subsection 11 (2), nor as affecting the right of the Assembly to expel a member according to the practice of Parliament or otherwise. R.S.O. 1970, c. 240, s. 11.

Effect of
election of
disqualified
person

- 13.** If a person who is disqualified or ineligible or incapable of being elected a member of the Assembly is nevertheless elected and returned, his election and return is void. R.S.O. 1970, c. 240, s. 12.

Member not
disqualified
on appoint-
ment to
Executive
Council, etc.

- 14.** Notwithstanding anything in any Act, where a member of the Assembly is appointed a member of the Executive Council or a Parliamentary Assistant, he shall not, by reason of the acceptance of such appointment, vacate his seat or be disqualified from sitting or voting in the Assembly. R.S.O. 1970, c. 240, s. 13; 1972, c. 1, s. 4 (2).

15.—(1) If a member of the Assembly by accepting any office or becoming a party to a contract or agreement as in sections 8 and 10 mentioned is disqualified by law to continue to sit or vote in the Assembly, his seat shall be vacated, but he may be re-elected if he is not declared ineligible under this Act.

Disqualifica-
tion
through
acceptance
of office

(2) Nevertheless, whenever a person holding any of the offices mentioned in section 2 of the *Executive Council Act* and being at the same time a member of the Assembly resigns his office and accepts any other of such offices, he does not thereby vacate his seat in the Assembly.

Saving in
case of,
exchange of
offices in
Executive
Council
R.S.O. 1980,
c. 147

(3) Where a member of the Executive Council holding any one of the offices mentioned in section 2 of the *Executive Council Act* is appointed to hold another office in addition to or in connection with such first-mentioned office, he does not thereby vacate his seat, and any increase or change of emolument arising from the holding of such two offices does not cause a vacancy or render a re-election necessary. R.S.O. 1970, c. 240, s. 14.

additional
offices in
Executive
Council

16.—(1) Subject to section 12, a person ineligible as a member of or disqualified from sitting or voting in the Assembly who sits or votes therein while he is so ineligible or disqualified shall forfeit the sum of \$2,000 for every day on which he so sits or votes, and such sum may be recovered from him by any person who sues for it in any court of competent jurisdiction.

Penalty upon
disqualified
person
sitting or
voting

(2) If an action is brought and judgment is recovered against the defendant, no other action shall be brought or proceeding taken against him for any act under this section committed before notice to him of the recovery of the judgment.

Idem

(3) The court wherein any other action is brought contrary to the intent and meaning of this Act, may upon the defendant's motion, stay the proceedings therein, if the first-mentioned action be prosecuted without fraud and with effect, but no action shall be deemed an action within this section unless so prosecuted. R.S.O. 1970, c. 240, s. 15.

Staying
proceedings
in other
actions

17.—(1) A member elect may at any time before his election is complained of disclaim his seat in the manner hereinafter provided, and he thereby vacates the seat and ceases to be a member in respect of the seat so disclaimed.

Disclaimer
by member
elect

Mode of
disclaiming

(2) A member elect who desires to disclaim may transmit by registered mail addressed to the Clerk of the Legislative Assembly, Toronto, or cause to be delivered to him, a disclaimer signed by the member in the presence of two subscribing witnesses to the following effect:

I....., member elect to the Legislative Assembly
for the electoral district of.....,
hereby disclaim all my right or title to sit or vote or in any manner
to act as such member.

Transmis-
sion of copy
of disclaimer

(3) The Clerk of the Assembly shall, on receiving a disclaimer, forthwith send a copy thereof,

- (a) in the case of an election that has taken place in The Regional Municipality of York or The Municipality of Metropolitan Toronto, to the Registrar of the Supreme Court at Toronto;
- (b) in the case of an election that has taken place elsewhere, to the local registrar for the county or provisional judicial district in which the electoral district for which the member so disclaiming or any part thereof is situate, was elected. R.S.O. 1970, c. 240, s. 17 (1-3).

Resignation
before
meeting of
Legislature

18. If a person returned as elected at a general election wishes to resign his seat before the first session of the Legislature thereafter, he may address and cause to be delivered to any two members elect of the Assembly a declaration that he resigns his seat, made in writing under his hand before two subscribing witnesses, and the two members upon receiving the declaration shall forthwith address their warrant under their hands and seals to the Chief Election Officer for the issue of a writ for the election of a member for the electoral district in the place of the member so resigning, and the writ shall issue accordingly. R.S.O. 1970, c. 240, s. 18.

In other
cases

19.—(1) A member may also resign his seat,

- (a) by giving in his place in the Assembly notice of his intention to resign it, which notice shall be entered immediately by the Clerk of the Assembly upon the Journals of the Assembly; or
- (b) by addressing and causing to be delivered to the Speaker a declaration that he resigns his seat, made in writing under his hand before two subscribing witnesses, which declaration may be so made and delivered either during a session of the Legislature or in the interval between two sessions.

(2) An entry of the declaration so delivered to the Speaker shall thereafter be made upon the Journals of the Assembly. Record

(3) Immediately after the notice of intention to resign has been entered upon the Journals, or after the receipt of the declaration, as the case may be, the Speaker shall address his warrant under his hand and seal to the Chief Election Officer for the issue of a writ for the election of a member in the place of the member so resigning, and in either case the writ shall issue accordingly. R.S.O. 1970, c. 240, s. 19. New writ

20. If a member wishes to resign his seat in the interval between two sessions of the Legislature, and there is then no Speaker, or the Speaker is absent from Ontario, or if the member is himself the Speaker, he may address and cause to be delivered to two members the declaration before mentioned, and the two members upon receiving the declaration shall forthwith address their warrant under their hands and seals to the Chief Election Officer for the issue of a writ for the election of a member in the place of the member so resigning, and the writ shall issue accordingly. R.S.O. 1970, c. 240, s. 20. Where there is no Speaker, or the member is himself the Speaker

21.—(1) A member or member elect tendering his resignation in any manner hereinbefore provided for shall be deemed to have vacated his seat and to have ceased to be a member of the Assembly in respect thereof. Consequences of resignation

(2) A member or member elect shall not tender his resignation while his election is controverted, nor until after the expiration of the time within which an election petition may be filed. R.S.O. 1970, c. 240, s. 21. Time for resignation

22. Forthwith after receipt by the Clerk of the Assembly of a judgement by the Supreme Court under Part VIII of the *Election Act* that the election of a person is void and ordering a new election, the Speaker or, if there is no Speaker or the Speaker is absent from Ontario or is unable to act, the Clerk of the Assembly shall address his warrant under his hand and seal to the Chief Election Officer for the issue of a writ for the election of a member for the electoral district the election for which was adjudged to be void, and the writ shall issue accordingly. R.S.O. 1970, c. 240, s. 22, *revised*. Issue of writ for new election when election adjudged void R.S.O. 1980, c. 123

23. The proceedings taken under sections 18 to 22 by the Speaker or Clerk of the Assembly shall be reported to the Report to Assembly

Assembly at the earliest practicable time, and shall be forthwith entered upon the Journals. R.S.O. 1970, c. 240, s. 23.

Disqualifi-
cation of
persons
declared
not elected

24.—(1) If a person returned as elected appears by the judgment mentioned in section 22 not to have been duly returned or elected, he shall not thereafter unless re-elected sit or vote in the Assembly.

Rights of
persons
declared
elected

(2) If a person, other than the person returned as elected, appears by the judgment to have been duly returned or elected, he is thereupon entitled to sit and vote in the Assembly. R.S.O. 1970, c. 240, s. 24.

Proceedings
in case of
vacancy by
death or
acceptance
of office

25.—(1) If a vacancy occurs in the Assembly by the death of a member, or by his accepting an office, commission or employment, or by his becoming a party to a contract as mentioned in section 10, unless otherwise provided by this Act, the Speaker, on being informed of the vacancy by a member of the Assembly in his place, or by notice in writing under the hands and seals of two members, shall forthwith address his warrant to the Chief Election Officer for the issue of a writ for the election of a member to fill the vacancy, and the writ shall issue accordingly.

Proceedings
when
Speaker is
absent from
Ontario or
there is no
Speaker

(2) If any such vacancy occurs, or at any time thereafter, before the warrant for the writ has issued, there is no Speaker, or the Speaker is absent from Ontario, or if the member whose seat is vacated is himself the Speaker, then two members may address their warrant under their hands and seals to the Chief Election Officer for the issue of a writ for the election of a member to fill the vacancy, and the writ shall issue accordingly. R.S.O. 1970, c. 240, s. 26.

Filling a
vacancy
before
Legislature
meets after
a general
election

26.—(1) A warrant may issue under the hands and seals of two members elect to the Chief Election Officer for the issue of a writ for the election of a member to fill a vacancy arising after a general election and before the first session of the Legislature thereafter, by reason of any of the causes mentioned in section 25, and the writ may issue at any time after such vacancy.

Election
being
contested not
affected

(2) The election to be held under the writ does not affect the right of any person entitled to contest the previous election, and the court shall determine whether the member who has died or whose seat has become vacant as aforesaid, or any other person, was duly returned or elected, which determination,

if adverse to the return of such member and in favour of any other candidate, avoids the election held under this section, and the candidate declared duly elected at the previous election is entitled to take his seat as if no subsequent election had been held. R.S.O. 1970, c. 240, s. 27.

27.—(1) Where a vacancy occurs in the membership of the Assembly, a writ shall be issued within six months after receipt by the Chief Election Officer of the warrant for the issue of a writ for the election of a member to fill such vacancy. Where vacancy exists in Assembly
1971, c. 101, s. 1, *part*; 1974, c. 72, s. 2.

(2) This section does not apply where the vacancy occurs in the last year of the legal life of the Assembly. Non-application of section

(3) If the Legislature is dissolved after the issue of a writ under subsection (1) and before an election is held under the writ, the writ is revoked on the dissolution of the Legislature. Writ revoked on dissolution of Legislature
1971, c. 101, s. 1, *part*.

28.—(1) The Assembly at its first meeting after a general election shall proceed to elect one of its members to be Speaker and one of its members to be Deputy Speaker. Election of Speaker and Deputy

(2) In case of a vacancy in the office of Speaker or Deputy Speaker, the Assembly shall proceed to elect another of its members to fill the vacancy. 1974, c. 116, s. 1, *part*. Vacancy in office of Speaker or Deputy

29.—(1) The Speaker shall preside at all meetings of the Assembly and shall preside over and have charge of the Office of the Assembly. Duties

(2) In the absence of the Speaker, the Deputy Speaker has all the powers, privileges and duties of the Speaker. 1974, c. 116, s. 1, *part*. Absence of Speaker

30. When the Speaker or the Deputy Speaker finds it necessary to leave the chair during any part of the sittings on any day, he may call upon any member to take the chair and to act as Speaker during the remainder of the day unless the Speaker or the Deputy Speaker resumes the chair before the close of the sittings for that day. 1974, c. 116, s. 1, *part*. Illness, etc., of the Speaker or Deputy

31. When the Speaker and the Deputy Speaker are not present at the meeting of the Assembly on any day, the Assembly may elect a member to take the chair and act as Speaker for that day. 1974, c. 116, s. 1, *part*. Election of Speaker for the day

Election
of Speaker
pro
tempore

32. If the Speaker and the Deputy Speaker are absent from the chair for a period of forty-eight consecutive hours, the Assembly may elect another of its members to act as Speaker, and the member so elected, during the continuance of the absence of the Speaker and the Deputy Speaker, has all the powers, privileges and duties of the Speaker. 1974, c. 116, s. 1, *part*.

Speaker and
Deputy to
continue in
office
following
dissolution

33. The persons who hold the office of Speaker and Deputy Speaker at the time of any dissolution of the Legislature shall be deemed to be the Speaker and Deputy Speaker, respectively, until a Speaker and Deputy Speaker are elected by the Assembly. 1974, c. 116, s. 1, *part*.

Validity of
acts while
acting
Speaker
presides

34. Every bill passed and every order made and thing done by the Assembly while a member is acting as Speaker is as valid and effectual as if done while the Speaker himself was in the chair. R.S.O. 1970, c. 240, s. 34.

Power to
compel
attendance
of witnesses,
etc.

35.—(1) The Assembly may at all times command and compel the attendance before the Assembly or a committee thereof of such persons, and the production of such papers and things, as the Assembly or committee considers necessary for any of its proceedings or deliberations.

Speaker's
warrant for
attendance,
etc.

(2) When the Assembly requires the attendance of a person before the Assembly or a committee thereof, the Speaker may issue his warrant directed to the person named in the order of the Assembly requiring his attendance before the Assembly or committee and the production of the papers and things as ordered. R.S.O. 1970, c. 240, s. 35.

Protection
of persons
acting under
authority

36. No person is liable in damages or otherwise for any act done under the authority of the Assembly and within its legal power or under or by virtue of a warrant issued under such authority, and every such warrant may command the aid and assistance of all sheriffs, bailiffs, constables and others, and every refusal or failure to give such aid or assistance when required is a contravention of this Act. R.S.O. 1970, c. 240, s. 36.

Privilege of
speech, etc.

37. A member of the Assembly is not liable to any civil action or prosecution, arrest, imprisonment or damages, by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or said by him before the Assembly or a committee thereof. R.S.O. 1970, c. 240, s. 37.

Freedom
from arrest

38. Except for a contravention of this Act, a member of the Assembly is not liable to arrest, detention or molestation

for any cause or matter whatever of a civil nature during a session of the Legislature or during the twenty days preceding or the twenty days following a session. R.S.O. 1970, c. 240, s. 38.

39. During the periods mentioned in section 38, members, officers and employees of the Assembly and witnesses summoned to attend before the Assembly or a committee thereof are exempt from serving or attending as jurors in any court of justice in Ontario. R.S.O. 1970, c. 240, s. 39.

Exemption of members and officers from serving as jurors

40. No member of the Assembly shall knowingly accept or receive, either directly or indirectly, any fee, compensation or reward for or in respect of the drafting, advising upon, revising, promoting or opposing any bill, resolution, matter or thing submitted or intended to be submitted to the Assembly or a committee thereof. R.S.O. 1970, c. 240, s. 40.

Members not to receive fees for drafting bills, etc.

41. No barrister or solicitor who in the practice of his profession is a partner of a member of the Assembly shall knowingly accept or receive, directly or indirectly, any fee, compensation or reward for or in respect of any matter or thing mentioned in section 40. R.S.O. 1970, c. 240, s. 41.

Barristers, etc., being partners of members not to receive fees for drafting bills, etc.

42. Every person contravening any of the provisions of section 40 or 41 is liable to a penalty equal to the amount or value of the fee, compensation or reward accepted or received by him and the sum of \$500. R.S.O. 1970, c. 240, s. 42.

Penalty

43. Any contravention of section 40 is a corrupt practice, and a writ alleging the contravention may be issued within six months after the contravention in the same manner and the proceedings thereupon shall be the same as in the case of other actions under Part VIII of the *Election Act*. R.S.O. 1970, c. 240, s. 43, *revised*.

Breach of s. 40 a corrupt practice

R.S.O. 1980, c. 133

44. If judgment is recovered against a member of the Assembly for any penalty under section 42, or if by a resolution of the Assembly it is declared that a member has been guilty of a contravention of section 40, or if it is adjudged by the Supreme Court in an action mentioned in section 43 that a member has been guilty of a contravention of section 40, his election becomes void and his seat shall be vacated, and a writ shall issue for a new election as if he were dead and he is incapable of being elected to or of sitting in the Assembly during the remainder of the term for which he was elected. R.S.O. 1970, c. 240, s. 44, *revised*.

Vacation of seat

Jurisdiction
of Assembly

45.—(1) The Assembly has all the rights and privileges of a court of record for the purposes of summarily inquiring into and punishing, as breaches of privilege or as contempts and without affecting the liability of the offenders to prosecution and punishment criminally or otherwise according to law, independently of this Act, the acts, matters and things following:

Assaults,
insults,
libels

1. Assault, insult or libel upon a member of the Assembly during a session of the Legislature or during the twenty days preceding or the twenty days following a session.

Threats

2. Obstructing, threatening or attempting to force or intimidate a member of the Assembly.

Bribery and
offering of
fee

3. Offering to, or the acceptance by, a member of the Assembly of a bribe to influence him in his proceedings as such, or offering to or the acceptance by a member of any fee, compensation or reward for or in respect of the drafting, advising upon, revising, promoting or opposing any bill, resolution, matter or thing submitted to or intended to be submitted to the Assembly or a committee thereof.

Interference
with officers

4. Assault upon or interference with an officer of the Assembly while in the execution of his duty.

Tampering
with witness

5. Tampering with a witness in regard to evidence to be given by him before the Assembly or a committee thereof.

False
evidence

6. Giving false evidence or prevaricating or misbehaving in giving evidence or refusing to give evidence or to produce papers before the Assembly or a committee thereof.

Disobedience
to warrant

7. Disobedience to a warrant requiring the attendance of a witness before the Assembly or a committee thereof, or refusal or neglect to obey a warrant mentioned in section 36.

Presenting
false
documents

8. Presenting to the Assembly or to a committee thereof a forged or false document with intent to deceive the Assembly or committee.

Falsifying
records, etc.

9. Forging, falsifying or unlawfully altering a record of the Assembly or of a committee thereof, or any document or petition presented or filed or intended to be presented or filed before the Assembly or

committee, or the setting or subscribing by any person of the name of another person to any such document or petition with intent to deceive.

10. Taking any civil proceeding against, or causing or effecting the arrest or imprisonment of a member of the Assembly in any civil proceeding, for or by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or said by him before the Assembly or a committee thereof. Taking civil proceedings against member
11. Causing or effecting the arrest, detention or molestation of a member of the Assembly for any cause or matter of a civil nature during a session of the Legislature or during the twenty days preceding or the twenty days following a session. Arresting member for debt, etc

(2) For the purposes of this Act, the Assembly possesses all the powers and jurisdiction necessary or expedient for inquiring into, adjudging and pronouncing upon the commission or doing of the acts, matters or things mentioned in subsection (1) and for awarding and carrying into execution the punishment thereof. R.S.O. 1970, c. 240, s. 45. Jurisdiction given as to inquiring and punishing

46. Every person who, upon such inquiry, is found to have committed or done any of the acts, matters, or things mentioned in section 45, in addition to any other penalty or punishment to which he may by law be subject, is liable to imprisonment for such time during the session of the Legislature then being held as is determined by the Assembly. R.S.O. 1970, c. 240, s. 46. Punishment for contravention of s. 45

47.—(1) Where the Assembly declares that a person has been guilty of a breach of privilege or of a contempt in respect of any of the acts, matters and things mentioned in section 45 and directs that the person be kept and detained in the custody of the sergeant-at-arms attending the Assembly, the Speaker shall issue his warrant to the sergeant-at-arms to take the person into custody and to keep and detain him in custody in accordance with the order of the Assembly. Proceeding on contravention of s. 45 and arrest thereunder

(2) Where the Assembly directs that the imprisonment shall be in a correctional institution in the Judicial District of York, the Speaker shall issue his warrant to the sergeant-at-arms and to the superintendent of such correctional institution commanding the sergeant-at-arms to take such person into custody and to deliver him to the superintendent of such correctional institution, and commanding the superintendent to receive and keep and detain him in custody in accordance with the order of the Assembly. R.S.O. 1970, c. 240, s. 47. Warrant of committal

Decision of
Assembly
final

48. The determination of the Assembly upon any proceeding under this Act is final and conclusive. R.S.O. 1970, c. 240, s. 48.

Protection
of persons
publishing
papers by
order of
Assembly

49.—(1) Any person who is a defendant in a civil proceeding commenced in any manner for or in respect of the publication of any report, paper, vote or proceeding by such person or by his servant by or under the authority of the Assembly may bring before the court in which the proceeding is pending (first giving twenty-four hours notice of his intention so to do to the plaintiff or his solicitor) a certificate under the hand of the Speaker or of the Clerk of the Assembly, stating that the report, paper, vote or proceeding in respect whereof the proceeding has been commenced was published by such person or by his servant by order or under the authority of the Assembly together with an affidavit verifying the certificate.

Stay of
proceedings

(2) The court shall thereupon immediately stay the proceeding and it and every writ or process issued therein shall be taken to be finally put an end to, determined and superseded. R.S.O. 1970, c. 240, s. 49.

Production
of papers
to court

50.—(1) If a civil proceeding is commenced for or in respect of the publication of a copy of such report, paper, vote or proceeding, the defendant at any stage of the proceeding may lay before the court the report, paper, vote or proceeding and the copy with an affidavit verifying the report, paper, vote or proceeding and the correctness of the copy.

Stay of
proceedings

(2) The court shall thereupon immediately stay the proceeding and it and every writ or process issued therein shall be taken to be finally put an end to, determined and superseded. R.S.O. 1970, c. 240, s. 50.

Bona fide
publication

51. It is a good defence to any civil proceeding against a person for printing any extract from or abstract of any such report, paper, vote or proceeding that the extract or abstract was published *bona fide* and without malice. R.S.O. 1970, c. 240, s. 51.

Saving of
privileges
inherent in
Assembly or
members

52. Except so far as is provided by section 40, nothing in this Act shall be construed to deprive the Assembly or a committee or member thereof of any right, immunity, privilege or power that the Assembly, committee or member might otherwise have been entitled to exercise or enjoy. R.S.O. 1970, c. 240, s. 52.

53. Where the Assembly has adopted the report of a committee of the Assembly recommending the purchase of any publication for the use of the members of the Assembly or for other persons, the publication may be purchased by the Treasurer of Ontario and distributed according to the recommendations of the report, and the cost thereof shall be paid out of any sum appropriated by the Legislature for stationery, printing and binding. R.S.O. 1970, c. 240, s. 53, *revised*.

Payment
for books
ordered by
committee

54. At least twenty members of the Assembly are necessary to constitute a quorum for the transaction of business, and for that purpose the Speaker shall be counted. R.S.O. 1970, c. 240, s. 54.

Quorum

55. Questions arising in the Assembly shall be decided by a majority of voices, other than that of the Speaker, and, when the voices are equal, the Speaker has a vote. R.S.O. 1970, c. 240, s. 55.

Voting

56. The Assembly shall not adopt or pass any vote, resolution, address or bill for the appropriation of any part of the Consolidated Revenue Fund, or of any tax or impost, to any purpose that has not been first recommended by a message of the Lieutenant Governor to the Assembly during the session in which the vote, resolution, address or bill is proposed. R.S.O. 1970, c. 240, s. 56.

Condition
precedent to
appropriations

57. The judges of the Supreme Court are *ex officio* commissioners to report under the Rules of the Assembly in respect of estate bills. R.S.O. 1970, c. 240, s. 57.

Commis-
sioners on
estate bills

58. Any standing or special committee of the Assembly may require that facts, matters and things relating to the subject of inquiry be verified or otherwise ascertained by the oral examination of witnesses, and may examine witnesses upon oath, and for that purpose the chairman or any member of the committee may administer the oath in Form 1. R.S.O. 1970, c. 240, s. 58.

Power of
committees
to examine
on oath

59. Where witnesses are not required to be examined orally, an affirmation, declaration or affidavit, that is required to be made or taken by or according to any rule or order of the Assembly, or by the direction of any committee, and in respect of any matter or thing pending or proceeding before the committee, may be made and taken before the Clerk of the Assembly, the clerk of the committee, a commissioner for taking affidavits or a justice of the peace. R.S.O. 1970, c. 240, s. 59.

Affidavits

Members'
indemnities

60.—(1) An indemnity at the rate of \$24,500 per annum shall be paid to every member of the Assembly. 1980, c. 16, s. 1.

Members'
allowances,

(2) An allowance for expenses at the rate of \$8,000 per annum shall be paid to every member of the Assembly. 1979, c. 75, s. 1, *part*.

computation

(3) For the purpose of computing the amount of any indemnity or allowance payable under this section, a member shall be deemed to have been a member from the polling day on which he was elected and, when the Legislature of which he was a member was dissolved, he shall be deemed to have been a member until the day preceding the polling day that followed the dissolution, or until his death, whichever occurs first.

when paid

(4) Every indemnity and allowance under this section shall be paid on the 31st day of March in each year, but when a member resigns or dies or for any other reason ceases to be a member, the amounts that are payable to him for the period that concluded shall be paid forthwith. R.S.O. 1970, c. 240, s. 60 (3, 4).

Advances

(5) Notwithstanding subsection (4), upon the request of a member, there shall be paid, out of the moneys that have accrued to him at the time the request is made, any part of his indemnity not exceeding one-twelfth of his annual indemnity per month and any part of his allowance for expenses not exceeding one-twelfth of his annual allowance for expenses per month. 1978, c. 98, s. 1 (3).

Leaders'
allowances

61. In addition to his indemnity and allowance for expenses as a member there shall be paid a Leader's allowance for expenses,

- (a) to the Premier, at the rate of \$6,000 per annum;
- (b) to the Leader of the Opposition, at the rate of \$4,000 per annum; and
- (c) to the leader of a party, except the Premier and the Leader of the Opposition, that has a recognized membership of twelve or more persons in the Assembly, at the rate of \$2,000 per annum. 1980, c. 16, s. 2.

Indemnity;
of Speaker,
Leader of
Opposition
and leader of
a minority
party

62.—(1) In addition to his indemnity as a member, there shall be paid,

- (a) to the Speaker an indemnity at the rate of \$15,500 per annum;

- (b) to the Leader of the Opposition an indemnity at the rate of \$21,000 per annum; and
- (c) to the leader of a party, except the Premier and the Leader of the Opposition, that has a recognized membership of twelve or more persons in the Assembly an indemnity at the rate of \$8,000 per annum. 1980, c. 16, s. 3.

(2) For the purpose of computing the amount of any in- ^{computation} demnity payable under this section, the Speaker, Leader of the Opposition and leader of a party referred to in clause (1) (c), respectively, shall be deemed to have occupied the position from the polling day on which he was elected a member of the Assembly and, when the Legislature in which he occupied the position was dissolved, he shall be deemed to have occupied the position until the day preceding the polling day that followed the dissolution, or until his death, whichever occurs first; provided that, when the occupant of the position changes, the member succeeding to the position shall be deemed to have occupied the position from the day following that on which his predecessor ceased to occupy the position.

(3) Every indemnity under this section shall be paid on ^{When paid} the 31st day of March in each year, but when the Speaker, Leader of the Opposition or leader of a party referred to in clause (1) (c), as the case may be, ceases to occupy the position, the amounts that are payable to him for the period then concluded shall be paid forthwith.

(4) Notwithstanding subsection (3), upon the request of the ^{Advances} Speaker, the Leader of the Opposition or the leader of a party referred to in clause (1) (c), there shall be paid, out of the moneys that have accrued to him under this section at the time the request is made, any part of his indemnity under subsection (1) not exceeding one-twelfth of his indemnity per month. R.S.O. 1970, c. 240, s. 62 (2-4).

63.—(1) Where the principal residence of the Leader of the ^{Cost of} Opposition is outside The Municipality of Metropolitan Toronto, ^{accommoda-} he shall be paid the actual cost of his accommodation within The ^{tion in} Municipality of Metropolitan Toronto not exceeding in any year ^{Toronto} an amount that is \$1,000 more than the amount determined in respect of the year by the Board of Internal Economy under subsection 66 (7).

(2) Where the principal residence of the leader of a party, ^{Idem} except the Premier and the Leader of the Opposition, that has a recognized membership of twelve or more persons in the Assembly is outside The Municipality of Metropolitan Toronto,

he shall be paid the actual cost of his accommodation within The Municipality of Metropolitan Toronto not exceeding in any year an amount that is \$1,000 more than the amount determined in respect of the year by the Board of Internal Economy under subsection 66 (7). 1980, c. 77, s. 1.

Chairman and
Deputy
Chairman of
Whole House
and Chairmen
of standing
committees,
indemnity

64.—(1) In addition to his indemnity as a member, an indemnity shall be paid,

- (a) to the person who is Deputy Speaker and Chairman of the Committees of the Whole House at the rate of \$6,500 per annum;
- (b) to the Deputy Chairman of the Committees of the Whole House at the rate of \$4,000 per annum; and
- (c) to the chairman of each standing committee at the rate of \$3,300 per annum. 1979, c. 75, s. 5; 1980, c. 16, s. 4.

When paid

(2) Every indemnity under this section shall be paid on the 31st day of March in each year, but when the person occupying such position ceases to occupy the position, the amounts that are payable to him for the period then concluded shall be paid forthwith. 1973, c. 151, s. 5, *part*.

Whips,
indemnities

65.—(1) In addition to his indemnity as a member, an indemnity shall be paid,

- (a) to the Chief Government Whip, at the rate of \$7,000 per annum;
- (b) to the Deputy Government Whip, at the rate of \$4,300 per annum;
- (c) to each of not more than three Government Whips, at the rate of \$3,000 per annum;
- (d) to the Chief Opposition Whip, at the rate of \$4,300 per annum;
- (e) to each of not more than two Opposition Whips, at the rate of \$3,000 per annum; and
- (f) in the case of each party that has a recognized membership of twelve or more persons in the Assembly, other than the party from which the Government is chosen and the party recognized as the Official Opposition,

- (i) to the Chief Party Whip of the party, at the rate of \$3,500 per annum, and
- (ii) to the Party Whip of the party, at the rate of \$2,750 per annum. 1980, c. 16, s. 5.

(2) Every indemnity under this section shall be paid on the 31st day of March in each year, but when the person occupying such position ceases to occupy the position, the amounts that are payable to him for the period then concluded shall be paid forthwith. R.S.O. 1970, c. 240, s. 64 (2).

66.—(1) There shall be paid to each member of the Assembly for transportation by private automobile while on business as a member of the Assembly between the member's residence and the seat of government at Toronto or within his electoral district an allowance for every mile of such transportation in such amount as may be determined from time to time by the Board of Internal Economy. 1973, c. 151, s. 7, *part*; 1977, c. 24, s. 2 (1).

(2) Where a member of the Assembly travels between his residence and the seat of government at Toronto while on business as a member of the Assembly, he shall be paid the actual and reasonable cost of transportation by scheduled airline economy flight, on not more than fifty-two round trips for the member in any year, four of which may be used for such round trip travel for the member's spouse.

(3) Where a member of the Assembly travels between his residence and the seat of government at Toronto while on business as a member of the Assembly, he shall be paid the actual and reasonable cost of transportation by first class train accommodation or bus on any number of round trips for the member and not more than four such round trips for the member's spouse in any year and the actual and reasonable cost of berths, meals and gratuities incurred in the course of such transportation.

(4) There shall be paid to each member of the Assembly an allowance equal to the actual cost of travel by bus or train by the member while on business as a member of the Assembly within the electoral district represented by the member. 1973, c. 151, s. 7, *part*.

(5) The member of the Assembly representing the electoral district of Cochrane North, Kenora, Rainy River or Lake Nipigon shall be paid the actual cost, not exceeding \$2,730 in any year, of transportation by airplane within the electoral district and of accommodation within the electoral district or an electoral district contiguous thereto while on business

as a member of the Assembly and any other member of the Assembly may be paid such of his actual costs of accommodation within the electoral district represented by him expended due to unusual or special circumstances while on business as a member of the Assembly as may be approved by the Board of Internal Economy, not exceeding \$2,730 in any year. 1979, c. 75, s. 7 (1).

round trips
within
Ontario
from
residence
or seat of
government

(6) There shall be paid to each member of the Assembly for not more than six round trips by bus, train or economy flight by scheduled airline or by private or rented automobile, or any combination thereof, while travelling within Ontario in any year on business as a member of the Assembly from the member's residence or the seat of government at Toronto the lesser of,

(a) the total cost incurred by the member for not more than six such round trips; or

(b) \$800,

and the cost of transportation,

(c) by bus, train and economy flight by scheduled airline shall be the actual cost thereof;

(d) by rented automobile shall be the cost of the rental including the cost of a reasonable amount of public liability and collision insurance in relation thereto; and

(e) by private automobile shall be an allowance for every mile of such transportation in such amount as may be determined from time to time by the Board of Internal Economy. 1976, c. 60, s. 1 (2); 1977, c. 24, s. 2 (2).

accommoda-
tion

(7) There shall be paid to each member of the Assembly other than,

(a) the Ministers of the Crown;

(b) the Speaker;

(c) the Leader of the Opposition;

(d) the leader of a party, other than the Premier or the Leader of the Opposition, that has a recognized membership of twelve or more persons in the Assembly; and

- (e) members representing the electoral districts within The Municipality of Metropolitan Toronto,

the actual cost of accommodation while attending as members of the Assembly at the seat of government at Toronto not exceeding such amount in any year as may be determined from time to time by the Board of Internal Economy. 1973, c. 151, s. 7, *part*; 1977, c. 24, s. 2 (3); 1979, c. 75, s. 7 (2).

(8) For the purpose of subsection (7), a member shall be deemed to have been a member from the polling day on which he was elected and, when the Assembly of which he was a member was dissolved, he shall be deemed to have been a member until the day preceding the polling day that followed the dissolution, or until his death, whichever occurs first. 1980, c. 77, s. 2 (1). Computation

(9) Subject to subsection (8), a member is not entitled to any allowance for expenses incurred by him after the day a writ for a general election is issued until he is declared elected or, if a recount is applied for, until he is declared elected following the recount. 1973, c. 151, s. 7, *part*; 1980, c. 77, s. 2 (2). No expenses following writ of election

67.—(1) There shall be paid to each member of a committee of the Assembly other than the chairman thereof an allowance for expenses of \$52, and to the chairman thereof an allowance for expenses of \$62, and, Members of committees, allowances and expenses

- (a) in addition to the allowance provided for in section 66, his actual disbursements for transportation other than by private automobile or an allowance in such amount as may be determined from time to time by the Board of Internal Economy for every mile travelled by private automobile; and

- (b) his actual disbursements for meals, accommodation and gratuities,

for or incurred on every day on which the Assembly is not sitting,

- (c) upon which he attends a meeting of the committee; or

- (d) upon which he is absent from home and is travelling to and from meetings of the committee. R.S.O. 1970, c. 240, s. 66 (1); 1977, c. 24, s. 3; 1978, c. 98, s. 8.

(2) The allowances and disbursements provided in subsection (1) shall be payable to a member of a committee for Idem

every day upon which he is absent from home and from the seat of government and is engaged in the work of the committee, whether or not the Assembly is sitting. R.S.O. 1970, c. 240, s. 66 (2).

Severance
allowance

68.—(1) A person who is a member of the Assembly immediately before the Assembly is dissolved or is ended by the passage of time and who does not become a member of the next following Assembly shall be paid a severance allowance equal to one-quarter of his annual indemnity as a member at the rate in force immediately before he ceased to be a member.

Severance
allowance on
resignation

(2) A member of the Assembly who resigns his seat shall be paid a severance allowance equal to one-quarter of his annual indemnity as a member at the rate in force on the day he ceases to be a member.

Payment to
personal
representative
on death of
member

(3) Where a person who is a member of the Assembly dies, whether before the Assembly is dissolved or is ended by the passage of time or after dissolution or ending of the Assembly but before the polling day that follows the dissolution or ending, an amount equal to one-quarter of his annual indemnity as a member at the rate in force on the day of his death or immediately before the dissolution or ending, as the case requires, shall be paid to his personal representative. 1978, c. 98, s. 9.

House
Leaders'
indemnities

69. In addition to his indemnity as a member, an indemnity shall be paid,

- (a) to the Opposition House Leader, at the rate of \$7,000 per annum;
- (b) to the House Leader of a party, other than the party from which the Government is chosen and the party recognized as the Official Opposition, that has a recognized membership of twelve or more persons in the Assembly at the rate of \$5,000 per annum. 1980, c. 16, s. 6.

Appropri-
ations for
caucuses

70. For each fiscal year there shall be provided,

- (a) for the use of the caucus of the Government, the caucus of the Official Opposition and the caucus of a party that has a recognized membership of twelve or more persons in the Assembly, for research purposes, such sums of money as are appropriated therefor by the Legislature;
- (b) for the use of the caucus of the Government, the caucus of the Official Opposition and the caucus

of a party that has a recognized membership of twelve or more persons in the Assembly, for such use as the caucus may determine, such sum of money as is appropriated therefor by the Legislature for each caucus based on the number of members in the caucus;

(c) for the use of the caucus of the Official Opposition for the purpose of defraying the cost of salaries and expenses of the personal staff of the Leader of the Official Opposition, an amount appropriated therefor by the Legislature; and

(d) for the use of the caucus of a party, other than the party from which the Government is chosen and the party recognized as the Official Opposition, that has a recognized membership of twelve or more persons in the Assembly, for the purpose of defraying the cost of salaries and expenses of the personal staff of the Leader of such party, an amount appropriated therefor by the Legislature. 1974, c. 116, s. 2, *part*; 1976, c. 60, s. 2.

71.—(1) Every member of the Assembly is entitled to a private secretary or personal assistant and moneys shall be provided towards the cost of the salaries of such persons out of moneys appropriated therefor by the Legislature.

Secretary
or assistant
for each
member

(2) Every member of the Assembly is entitled to office equipment, supplies and services in accordance with standards established by the Speaker. 1974, c. 116, s. 2, *part*.

Supplies
for members

72.—(1) In this section, “Commission” means the Commission on Election Contributions and Expenses established under the *Election Finances Reform Act*.

Interpre-
tation

R.S.O. 1980,
c. 134

(2) The Commission each year shall review and make such recommendations as it considers proper in respect of the indemnities and allowances of members of the Assembly under this Act.

Review of
indemnities
and
allowances

(3) The Commission shall report its recommendations to the Speaker and the Speaker shall cause the report to be laid before the Assembly if it is in session or, if not, at the next ensuing session. 1978, c. 98, s. 11.

Annual
report

OFFICE OF THE ASSEMBLY

Office of
Assembly

73. The Office of the Assembly shall consist of the Speaker, the Deputy Speaker, the Clerk of the Legislative Assembly, the First Clerk Assistant, the Sergeant-at-Arms, the Director of Administration and such other employees as may be required from time to time for the proper conduct of the business of the Office of the Assembly. 1974, c. 116, s. 3, *part*.

Clerk of
Legislative
Assembly,
appointment

74.—(1) The Lieutenant Governor in Council shall appoint the Clerk of the Legislative Assembly.

Tenure of
office

(2) The Clerk of the Legislative Assembly shall hold office during good behaviour but shall be removable from office for cause by the Lieutenant Governor on address of the Assembly.

Appointment
of officers
and staff

(3) The First Clerk Assistant, the Sergeant-at-Arms and the Director of Administration shall be appointed by the Lieutenant Governor in Council upon such terms and conditions as the Speaker may recommend and the other employees of the Office of the Assembly shall be appointed by the Speaker. 1974, c. 116, s. 3, *part*.

Duties of
officers

75. The Clerk of the Legislative Assembly, the First Clerk Assistant, the Sergeant-at-Arms and the Director of Administration have such duties as may be provided for, from time to time, in the Standing Orders of the Legislative Assembly or as may be prescribed by the Speaker. 1974, c. 116, s. 3, *part*.

Estimates,
submission
to Board,

76.—(1) The Speaker shall present the estimates of the sums of money that will be required to be provided by the Legislature for the purposes of this Act to the Board of Internal Economy who shall review such estimates and make such alterations as it considers proper, and shall thereafter concur in such estimates.

laid before
Assembly

(2) The Speaker shall cause the estimates to be laid before the Assembly. 1974, c. 116, s. 3, *part*.

Legislative
Assembly
Fund

77.—(1) The Speaker shall establish, maintain and be accountable for a fund to be known as the Legislative Assembly Fund.

Bank
account

(2) The Speaker shall maintain an account with the Province of Ontario Savings Office or with any chartered bank designated by the Board of Internal Economy for the deposit of moneys paid into the Legislative Assembly Fund.

(3) The fiscal year for the Legislative Assembly Fund shall be the same as the fiscal year for the Consolidated Revenue Fund.

Fiscal
year

(4) The Speaker shall keep a record of all moneys received for or disbursed from the Legislative Assembly Fund.

Record

(5) The Speaker shall make an annual report to the Board of Internal Economy respecting the receipts and disbursements from the Legislative Assembly Fund. 1974, c. 116, s. 3, *part.*

Annual
report

78. The moneys required from time to time for the purposes of this Act shall be paid out of moneys appropriated by the Assembly for the purposes of this Act and shall be paid into the Legislative Assembly Fund by the Treasurer of Ontario upon the requisition, from time to time, of the Speaker. 1974, c. 116, s. 3, *part.*

Moneys paid
into Fund

79.—(1) When, because the Legislature is adjourned, prorogued or dissolved or because the urgency of other public business prevents the Legislature from considering estimates or supplementary estimates, moneys are urgently required for the purposes of this Act before they have been appropriated, the Treasurer of Ontario may, subject to the approval of the Lieutenant Governor in Council, advance the required moneys for the use of the Speaker upon the written request of the Board of Internal Economy, and such moneys shall be paid into the Legislative Assembly Fund.

Where
moneys
required
before
appropriated

(2) All moneys advanced by the Treasurer of Ontario under subsection (1) shall be deemed to be an interest free loan repayable from moneys to be appropriated by the Legislature for the purposes of this Act. 1974, c. 116, s. 3, *part.*

Advances
repayable
out of
moneys to be
appropriated

80.—(1) Every payment out of the Legislative Assembly Fund shall be made by cheque, which shall be signed by the Speaker or the Deputy Speaker and by the Director of Administration or such other person who is for the time being authorized by the Speaker to sign cheques.

Form of
payments
out of
Fund

(2) The Speaker may authorize the use of facsimile signatures on cheques to be affixed thereto by printing, lithographing, engraving or by other mechanical means.

Signature

Destruction
of cancelled
cheques

(3) The Speaker, with the approval of the Provincial Auditor, may authorize the destruction, from time to time, of paid and cancelled cheques. 1974, c. 116, s. 3, *part.*

Payment of
debts
incurred
in fiscal
year

81.—(1) During the period of thirty days next following the end of a fiscal year there may be paid out of the Legislative Assembly Fund an amount, not exceeding the unexpended balance in the Fund at the end of such fiscal year, for the purpose of discharging any debt or obligation that was incurred during such fiscal year, and the expenditure may be charged in the accounts of such fiscal year, but any debts or obligations that remain undischarged at the end of such period of thirty days shall be paid out of the Legislative Assembly Fund for the ensuing fiscal year.

Unexpended
moneys to
be paid to
Treasurer

(2) All moneys that remain unexpended in the Legislative Assembly Fund after the thirty day period next following the end of a fiscal year shall be paid to the Treasurer of Ontario and become part of the Consolidated Revenue Fund. 1974, c. 116, s. 3, *part.*

Accountable
advances

82.—(1) Any member of the Assembly or the Chairman or Secretary of a committee of the Assembly may apply to the Speaker and the Speaker may authorize an accountable advance out of the Legislative Assembly Fund for the purpose of meeting disbursements for travel or other contingencies, or making payments on account of expenses incurred or to be incurred.

Idem

(2) If, at the termination of the fiscal year in which an advance was made, no accounting or repayment of the advance has been received, such advance shall be accounted for or repaid within fifteen days thereafter. 1974, c. 116, s. 3, *part.*

Audit

83. The accounts and financial transactions of the Office of the Assembly shall be audited annually by the Provincial Auditor. 1974, c. 116, s. 3, *part.*

Board of
Internal
Economy,
composition

84.—(1) There shall be a Board of Internal Economy composed of,

- (a) the Speaker, who shall be the chairman;
- (b) three commissioners appointed by the Lieutenant Governor in Council from among the members of the Executive Council; and
- (c) three commissioners appointed,

- (i) one from the caucus of the Government, by that caucus,
- (ii) one from the caucus of the Official Opposition, by that caucus, and
- (iii) one from the caucus of the party having the third largest membership in the Assembly other than a party referred to in subclauses (i) and (ii), by that caucus,

and the name of each person appointed shall be communicated to the Speaker within ten days after being appointed.

(2) The name and office of each member appointed as a commissioner shall be communicated by message from the Lieutenant Governor in Council to the Assembly.

Names of appointees to be communicated to Assembly

(3) A quorum of the Board consists of the Speaker, one commissioner appointed from among the members of the Executive Council and one other commissioner. 1974, c. 116, s. 3, *part*.

Quorum

85. The Board of Internal Economy may determine its rules and methods of procedure and shall keep a minute book in which shall be recorded the proceedings of the Board. 1974, c. 116, s. 3, *part*.

Procedures

86. The Board of Internal Economy may require any office, agency, commission or select committee of the Assembly whose estimates of moneys required are subject to review by the Board to submit to the Board on a monthly basis statements that set out current expenditures and forecast future expenditures and every such office, agency, commission and select committee shall submit the statements when so required. 1977, c. 69, s. 2.

Board may require monthly statements

87. The Board of Internal Economy has the power and duty,

Powers and duties of Board

- (a) to review estimates and forecasts, analyses of revenues, expenditures, commitments and other data pertaining to the Office of the Assembly and to assess the results thereof;
- (b) to approve the organization and staff establishment for the Office of the Assembly;
- (c) to approve and review administrative policies and procedures in relation to the operation of the Office of the Assembly;

- (d) to advise upon all matters related to the management, administration, accounting and collection and disbursement of moneys associated with the Legislative Assembly Fund;
- (e) to advise upon the retention and disposal of records except cancelled cheques; and
- (f) to advise upon and give directions in relation to any matter the Board considers necessary for the efficient and effective operation of the Office of the Assembly,

and, if considered desirable, it may report on any of such matters to the Assembly. 1974, c. 116, s. 3, *part*.

Transfer
of moneys
within
vote

88. The Board of Internal Economy may authorize the transfer of moneys from one item of the estimates of the Office of the Assembly to another item within the same vote and the Provincial Auditor shall make special mention in his report of any transfer under this section. 1974, c. 116, s. 3, *part*.

Regulation
of terms
and condi-
tions of
employment

89.—(1) Subject to the approval of the Board of Internal Economy, the Speaker may,

- (a) establish job classifications and salary ranges;
- (b) provide a system of cumulative vacation and sick leave credits for regular attendance and payments in respect of such credits;
- (c) provide for the establishment of plans for group life insurance, medical-surgical insurance or long-term income protection;
- (d) provide for the granting of leave of absence; and
- (e) prescribe any other terms and conditions of employment,

for employees of the Office of the Assembly.

Application
of employee
benefits of
public
servants

(2) The employee benefits applicable from time to time to the public servants of Ontario with respect to the matters referred to in clauses (1) (b), (c) and (d) apply or continue to apply, as the case may be, to the permanent and full-time employees of the Office of the Assembly until a plan or system in relation to the same subject-matter is provided by the Speaker under this Act, and where any such benefits are provided for in regulations made under the

Public Service Act, the Speaker, or any person authorized in writing by him, may exercise the powers and duties of a Minister or Deputy Minister or of the Civil Service Commission under such regulations. 1974, c. 116, s. 3, *part*.

90. The *Public Service Superannuation Act* applies to the permanent employees and full-time probationary employees of the Office of the Assembly as though the Office of the Assembly was a board designated by the Lieutenant Governor in Council under section 28 of that Act, and all credits in the Public Service Superannuation Fund of persons appointed as permanent employees of the Office of the Assembly accumulated under that Act before they became employees of the Office of the Assembly, are preserved and continued in accordance with that Act. 1974, c. 116, s. 3, *part*. Pension
R.S.O. 1980,
c. 419

91.—(1) If any complaint or representation is at any time made to the Speaker for the time being of the misconduct or unfitness of any employee of the Office of the Assembly, the Clerk of the Legislative Assembly may cause an inquiry to be made into such complaint or representation. Inquiry

(2) If, after a hearing, it appears to the Speaker that such person has been guilty of misconduct or is unfit to hold his position, the Speaker may, if such employee other than the Clerk of the Legislative Assembly has been appointed by the Lieutenant Governor in Council, reprimand or suspend him and report such suspension to the Lieutenant Governor in Council and if he has not been appointed by the Lieutenant Governor in Council, reprimand, suspend or dismiss him. Reprimand,
suspension
or
dismissal

(3) A decision of the Speaker to suspend or dismiss an employee may be appealed by the employee, within fourteen days after the decision has been communicated to him, to the Public Service Grievance Board established pursuant to the *Public Service Act*. Appeal to
Board
R.S.O. 1980,
c. 418

(4) The Public Service Grievance Board may hear and dispose of an appeal under this section and the provisions of the regulation under the *Public Service Act* that applies in relation to a grievance for dismissal applies with necessary modifications to an appeal under this section and the decision of the Board is final and the Board shall make a report of its decision including the reasons therefor to the Speaker and shall deliver a copy of the report to the appellant. 1974, c. 116, s. 3, *part*. Grievance
Board
authorized
to hear
appeal

92.—(1) Every employee of the Office of the Assembly shall, before any salary is paid to him, take and subscribe before the Speaker, the Clerk of the Legislative Assembly, or a person designated in writing by either of them, an oath of office and secrecy in Form 2. Oath of
office

Oath of
allegiance

(2) Every employee of the Office of the Assembly shall, before performing any duty as a member of the Office of the Assembly, take and subscribe before the Speaker or before the Clerk of the Legislative Assembly, or a person designated in writing by either of them, an oath of allegiance in Form 3. 1974, c. 116, s. 3, *part*.

Application of
R.S.O. 1980,
c. 539

93. The Speaker in his capacity as head of the Office of the Assembly shall be deemed to be an employer within the meaning and for the purposes of the *Workmen's Compensation Act*. 1974, c. 116, s. 3, *part*.

Part of
Legislative
Building
under
Speaker

94.—(1) Such parts of the Legislative Building as may be designated by the Lieutenant Governor in Council in addition to the Legislative Chamber shall be under the control of the Speaker and the order in council shall be laid before the Assembly.

Security
guidelines

(2) The Speaker shall establish guidelines for the security of the Legislative Chamber and the other parts of the Legislative Building that are under his control.

Enforcement

(3) The security of the parts of the Legislative Building designated to be under the control of the Speaker shall be enforced by the same personnel that enforce security in the other parts of the Legislative Building. 1974, c. 116, s. 3, *part*.

Provision
of services
for Assembly

95. The Speaker may call upon any ministry or agency of the Crown to provide any service or commodity for or on behalf of the Assembly that the Speaker considers necessary and the ministry or agency shall provide such service or commodity upon such terms and conditions as the ministry or agency may require. 1974, c. 116, s. 3, *part*.

Conflict with
other Acts
R.S.O. 1980,
cc. 254, 161,
291

96. In the event of a conflict between any provision of this Act and any provision of the *Management Board of Cabinet Act*, the *Financial Administration Act* or the *Ministry of Treasury and Economics Act*, the provision of this Act prevails. 1974, c. 116, s. 3, *part*.

Act
administered
by Speaker

97. The Speaker is responsible for the administration of this Act. 1974, c. 116, s. 3, *part*.

Delegation
of duties

98. The Speaker may, in writing, delegate to the Deputy Speaker or to any employee in the Office of the Assembly any of his powers and duties under sections 73 to 99. 1974, c. 116, s. 3, *part*.

Agreements

99.—(1) The Speaker, for and on behalf of the Office of the Assembly, may enter into any agreement that he considers

advisable for the purposes of carrying out the provisions of this Act.

(2) Any agreement entered into by the Speaker, or by any person duly authorized by him, enures to the benefit of the Assembly.

Agreements
enure to
benefit of
Assembly

(3) The Speaker or his delegate is not personally liable for any agreement that he has entered into under this section.

Speaker not
personally
liable

(4) The Speaker, for and on behalf of the Office of the Assembly, may sue in the name of the Attorney General. 1974, c. 116, s. 3, *part*.

Actions
brought
in name of
Attorney
General

FORM 1

(Section 58)

OATH OF WITNESSES

The evidence you shall give to this Committee touching the subject of the present inquiry shall be the truth, the whole truth, and nothing but the truth. So help you God.

R.S.O. 1970, c. 240, Form 2.

FORM 2

(Section 92)

I,,
do swear that I will faithfully discharge my duties as an employee of the Office of the Assembly and will observe and comply with the laws of Canada and Ontario, and, except as I may be legally required, I will not disclose or give to any person any information or document that comes to my knowledge or possession by reason of my being an employee of the Office of the Assembly.

So help me God.

1974, c. 116, s. 4, *part.*

FORM 3

(Section 92)

I,,
do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second (or the reigning sovereign for the time being), her heirs and successors according to law.

So help me God.

1974, c. 116, s. 4, *part.*

CHAPTER 236

Legislative Assembly Retirement Allowances Act

1. In this Act,

Interpre-
tation

- (a) "allowance" means an allowance under this Act;
- (b) "member" means a member of the Assembly;
- (c) "Speaker" means the Speaker of the Assembly;
- (d) "Treasurer" means the Treasurer of Ontario and Minister of Economics. 1973, c. 152, s. 1; 1975, c. 89, s. 1.

2. This Act shall be administered by the Speaker. 1973, Administra-
tion of Act c. 152, s. 2; 1975, c. 89, s. 2.

PART I

3. In this Part,

Interpre-
tation

- (a) "indemnity" means the indemnity payable to a person as a member under the *Legislative Assembly Act*; R.S.O. 1980,
c. 235
- (b) "minister" means a member of the Executive Council, and includes for the purposes of Part I a parliamentary assistant, the Speaker, the Leader of the Opposition and any member who was formerly a member of the Executive Council, a parliamentary assistant, the Speaker or the Leader of the Opposition;
- (c) "salary" means,
 - (i) the annual salary paid to a minister or a parliamentary assistant under the *Executive Council Act*, or R.S.O. 1980,
c. 147
 - (ii) the additional indemnity of the Speaker or the Leader of the Opposition under the *Legislative Assembly Act*;

(d) "service" means service as a member or as a minister, as the case may be, for which indemnity or salary was paid. 1973, c. 152, s. 3.

Application
of Part

4. This Part applies to a person who was a member on the 1st day of October, 1973 and a person who was a member before such date, but does not apply to a member who has elected to contribute under Part II. 1973, c. 152, s. 4.

Current con-
tributions,
members

5.—(1) There shall be deducted from the indemnity payable to a member an amount equal to 6 per cent thereof as such member's contribution under this Act.

Maximum
contribu-
tions,
members

(2) Notwithstanding anything in subsection (1), contributions under this section shall not be deducted from the indemnity of a member after the total amount contributed by him is sufficient to provide an allowance equal to the amount of his indemnity. 1973, c. 152, s. 5.

Eligibility
for allow-
ance,
members

6.—(1) A member who has contributed in respect of five or more years of service and who has attained the age of fifty-five years is entitled to an annual allowance during his lifetime upon his ceasing to be a member.

Idem

(2) Where a person is otherwise eligible for an allowance under this section but has not attained the age of fifty-five years, he may elect to take an allowance under subsection (3) at age fifty-five or an immediate allowance of a reduced amount under subsection (4).

Calculation
of allowance
at age 55,
members

(3) The amount of a person's annual allowance under this section shall be an amount equal to 75 per cent of the total of his contributions as a member, but the amount of his allowance shall not exceed the amount of his indemnity.

Calculation
of allowance
under age 55,
members

(4) Where a person who is otherwise eligible for an allowance under this section, but has not attained the age of fifty-five years elects to take an immediate allowance of a reduced amount, the amount of his allowance shall be calculated under subsection (3) and then shall be reduced actuarially in accordance with the tables prescribed by the regulations.

Application
of subs. (1)

(5) Subsection (1) applies to persons who are or were members on or after the 23rd day of July, 1968, and, in the case of persons who were members before such date but are or were not members after such date, section 6 of the

Legislative Assembly Retirement Allowances Act as it was in force immediately before such date applies. 1973, c. 152, s. 6. R.S.O. 1980, c. 236

7.—(1) An allowance under section 6 shall be suspended while the person entitled thereto is a member. Suspension of allowance, members

(2) Where a person whose allowance has been suspended under subsection (1) again ceases to be a member, his allowance shall be recalculated under section 6 having regard to any additional service as a member performed while his allowance was suspended. 1973, c. 152, s. 7. Recalculation of allowance, members

8.—(1) There shall be deducted from the salary payable to a minister an amount equal to 6 per cent thereof as such minister's contribution under this Part. Current contributions, ministers

(2) Notwithstanding anything in subsection (1), contributions under this section shall not be deducted from the salary of a minister after the total amount contributed by him is sufficient to provide an allowance equal to one-half the annual salary of a minister having charge of a ministry. 1973, c. 152, s. 8. Maximum contributions, ministers

9.—(1) A minister who has contributed under section 8 or 25 and who has contributed in respect of five or more years of service as a member and who has attained the age of fifty-five years is entitled to an annual allowance during his lifetime upon his ceasing to be a minister and a member. Eligibility for allowance, ministers

(2) Where a person is otherwise eligible for an allowance under this section but has not attained the age of fifty-five years, he may elect to take an allowance under subsection (3) at age fifty-five or an immediate allowance of a reduced amount under subsection (4). Idem

(3) The amount of a person's annual allowance under this section shall be an amount equal to 75 per cent of the total of his contributions as a minister, but the amount of his allowance shall not exceed one-half of the salary of a minister having charge of a ministry. Calculation of allowance at age 55, ministers

(4) Where a person who is otherwise eligible for an allowance under this section but has not attained the age of fifty-five years elects to take an immediate allowance of a reduced amount, the amount of his allowance shall be calculated under subsection (3) and then shall be reduced actuarially in accordance with the tables prescribed by the regulations. Calculation of allowance under age 55, ministers

Application
of subs. (1)

(5) Subsection (1) applies to persons who are or were ministers on or after the 23rd day of July, 1968, and, in the case of persons who were ministers before such date but are or were not ministers after such date, section 6 of the *Legislative Assembly Retirement Allowances Act* as it was in force immediately before such date applies. 1973, c. 152, s. 9.

Suspension
of allowance,
ministers

10.—(1) An allowance under section 9 shall be suspended while the person entitled thereto is a member.

Recalcula-
tion of
allowance,
ministers

(2) Where a person whose allowance has been suspended under subsection (1) again ceases to be a member, his allowance shall be recalculated under section 9 having regard to any additional contributory service as a minister performed while his allowance was suspended. 1973, c. 152, s. 10.

Spouse's
allowance

11.—(1) The spouse of a person who at the time of his or her death was in receipt of an allowance, or who was entitled to an allowance or whose allowance has been suspended under section 7 or 10, shall be paid during his or her lifetime an allowance equal to 60 per cent of the allowance that the person was receiving at the date of his or her death or to which he or she was entitled or that was suspended and recalculated under section 7 or 10, as the case may be. 1973, c. 152, s. 11 (1); 1977, c. 70, s. 1 (1).

Idem

(2) The spouse of a person,

- (a) who had elected under section 6 or 9 to take a deferred allowance at age fifty-five; or
- (b) who was eligible to make an election under section 6 or 9 but died before making such election; or
- (c) who died before attaining the age of fifty-five years while still contributing and who was otherwise eligible for an allowance,

at any time may elect to take a deferred allowance, in which case, commencing on the day that the person would have attained the age of fifty-five had he or she lived, the spouse shall be paid during his or her lifetime an allowance equal to 60 per cent of the allowance to which the person would have been entitled at that time, or the spouse may elect to take an immediate allowance, in which case the spouse shall be paid during his or her lifetime an allowance equal to 60 per cent of the allowance, reduced actuarially in accordance with the prescribed tables, that the person would have been entitled to receive at the time of the spouse's election. 1973, c. 152, s. 11 (2); 1977, c. 70, s. 1 (2).

(3) Subsections (1) and (2) do not apply to the spouse of ^{Exception} a person,

(a) if the spouse married the person after he or she attained the age of sixty-five years and the person died within one year of the marriage;

(b) if the spouse married the person after he or she was in receipt of the allowance; or

(c) after the spouse remarries. 1973, c. 152, s. 11 (3).

12.—(1) A person who makes contributions under this ^{Refunds} Part and who ceases to be a member before being eligible for an allowance is entitled to a refund of an amount equal to the amount of his contributions with interest thereon at the rate of 6 per cent per annum and, in the event of his death, the same refund shall be paid to his personal representative.

(2) Where a person who is in receipt of an allowance ^{Idem} dies and no person becomes entitled to an allowance under section 11, a refund shall be paid to his personal representative equal to the amount of the difference between the amount of his contributions with interest thereon at the rate of 6 per cent per annum up to the time he commenced to receive the allowance and the amount of the allowance paid to him up to the time of his death. 1973, c. 152, s. 12 (1, 2).

(3) A refund under subsection (1) to a former contributor ^{Application} shall be made only after the Speaker receives an application therefor in writing from the former contributor. 1973, c. 152, s. 12 (3); 1975, c. 89, s. 3.

13. A person who has received a refund under subsection ^{Reinstatement after refund} 12 (1) and who again becomes eligible to contribute under this Act may pay to the Treasurer the amount of the refund with interest at the rate of 6 per cent per annum and thereupon he is entitled to credit for the amount so paid. 1973, c. 152, s. 13.

PART II

14. In this Part,

^{Interpre-}
^{tation}

(a) “average annual remuneration” means,

(i) in respect of a person who was in receipt of an allowance immediately before the 1st day of October, 1977, the average annual re-

muneration of the person during any five fiscal years of his service, which years need not be consecutive, during which his remuneration was the highest, or

- (ii) in respect of a person who became entitled or who becomes entitled to an allowance on or after the 1st day of October, 1977, the average annual remuneration of the person during any three fiscal years of his service, which years need not be consecutive, during which his remuneration was highest;

R.S.O. 1980,
cc. 235, 147

- (b) "remuneration" means the indemnity paid to a person as a member under the *Legislative Assembly Act* together with all other indemnities and salaries paid to such person under that Act and the *Executive Council Act*;

- (c) "service" means service in respect of which contributions have been made,

- (i) under this Part, and

- (ii) under Part I in the case of a member who has made an election under section 16. 1973, c. 152, s. 14; 1977, c. 70, s. 2.

Application
of Part

15. This Part applies to a member who becomes a member after the 1st day of October, 1973 and to any member who was a member on that day and who elects to contribute under this Part. 1973, c. 152, s. 15.

Option of
present
members,
guarantee

16.—(1) A member who was a member on the 1st day of October, 1973 may elect to contribute under this Part by giving notice in writing to the Speaker within one year after such day, and, upon the effective date of such election, Part I ceases to apply to him and his contributions thereafter shall be in accordance with this Part, provided that when a member or his or her spouse becomes entitled to an allowance, the allowance shall be computed, subject to subsections (2), (3), (4) and (5), under Part I and Part II and the member or his or her spouse is entitled to the highest allowance so computed. 1973, c. 152, s. 16 (1); 1975, c. 89, s. 4.

Calculation
under
Part I

(2) A person who becomes entitled to an allowance under Part II may elect to have the calculation of his annual allowance under Part I based on,

(a) the contributions the member would have made if he had continued to contribute under Part I; or

(b) the amount calculated under clause (a) plus the annual amount of an annuity that would be provided, in accordance with the regulations, by the amount of the difference between the member's contributions under Part I and Part II in relation to his indemnity and salary as defined in Part I.

(3) When a person becomes entitled to an allowance under Part II and the member's age at the time of his retirement or death, as the case may be, is less than fifty-five years, the allowance under Part I shall be calculated as an immediate allowance of a reduced amount in accordance with such age.

Allowance where member under 55 years

(4) Where a member has elected to contribute under Part II and the person entitled to an allowance elects to receive an allowance under Part I as calculated under clause (2) (a), the person shall receive a refund of the amount of the difference between the member's contributions under Part I and Part II in relation to his indemnity and salary as defined in Part I.

Refund of certain contributions

(5) Where a member has elected to contribute under Part II and the person entitled to an allowance elects to receive an allowance under Part I, the person shall receive a refund of any contributions made under Part II in relation to any part of the member's remuneration that is not included in the member's indemnity and salary as defined in Part I. 1973, c. 152, s. 16 (2-5).

Idem

17. There shall be deducted from the remuneration payable to a member an amount equal to $8\frac{1}{2}$ per cent thereof as such member's contribution under this Part. 1973, c. 152, s. 17; 1977, c. 70, s. 3.

Contributions

18.—(1) A person who has contributed in respect of at least five years of service and who has credit in the Legislative Assembly Retirement Allowances Account for a number of years of service that, when added to his age on the date he ceases to be a member totals,

Eligibility for allowance, member

(a) in the case of a person who ceased to be a member before the 1st day of October, 1977, at least sixty years; or

- (b) in the case of a person who ceased or who ceases to be a member on or after the 1st day of October, 1977, at least fifty-five years,

is entitled to an annual allowance during his lifetime upon his ceasing to be a member.

Deferred
or
reduced
allowance

(2) Where a person has contributed in respect of at least five years of service but has not satisfied the sixty year rule or the fifty-five year rule, as the case requires, in subsection (1) on the date he ceased or ceases to be a member, he may elect to take a deferred annual allowance under subsection (3) at the age when he does satisfy such rule or an immediate annual allowance of a reduced amount under subsection (4). 1977, c. 70, s. 4.

Calculation
of allowance

(3) The amount of a person's annual allowance under this section shall be an amount equal to the sum of,

(a) 4 per cent of the average annual remuneration of the person multiplied by the years of service, including part of a year, to his credit up to and including the first ten years of such service; and

(b) 3.5 per cent of the average annual remuneration of the person multiplied by the years of service, including part of a year, to his credit over ten years and up to and including twenty years of such service,

but the amount of his allowance shall not exceed 75 per cent of his average annual remuneration. 1973, c. 152, s. 18 (3); 1977, c. 27, s. 1.

Computation
of reduced
allowance

(4) Where a person who has contributed in respect of at least five years of service but has not satisfied the sixty year rule elects to take an immediate annual allowance of a reduced amount, the amount of his allowance shall be calculated under subsection (3) and then shall be reduced actuarially in accordance with the tables prescribed by the regulations.

Where
service less
than five
fiscal years

(5) Where a person who is entitled to an allowance has been a contributor for less than five fiscal years, the allowance shall be based upon his average annual remuneration during the fiscal years that he was a contributor.

Part of
a year

(6) Where a calculation under this section involves part of a year, the calculation in respect of that part shall be made on a monthly basis, and,

- (a) any part of a month less than fifteen days shall be disregarded; and
- (b) any part of a month not less than fifteen days shall be deemed to be a month. 1973, c. 152, s. 18 (4-6).

19.—(1) Where a former member who is receiving an allowance dies leaving a spouse, the spouse shall be paid during his or her lifetime an allowance equal to, Spouse's allowance

- (a) 60 per cent of the allowance that the former member was receiving at the date of his or her death; and
- (b) in respect of each child under the age of eighteen years, to a maximum of three children of the former member, 10 per cent of the allowance that the former member was receiving at the date of his or her death.

(2) Where a member dies,

Computation
of allowance

- (a) leaving a spouse, the spouse shall be paid during his or her lifetime an allowance equal to the greater of,
 - (i) an amount equal to 25 per cent of the annual indemnity of the member in effect immediately before his or her death, or
 - (ii) an amount equal to,

A. 60 per cent of the allowance that the member had earned to the date of his or her death, and

B. in respect of each of not more than three children of the member under the age of eighteen years, 10 per cent of the allowance that the member had earned to the date of his or her death,

computed in the manner provided in section 18, but based on the member's service to the time of his or her death, and where the spouse dies leaving a child or children of the former member who at the date of the death of the spouse is or are under the age of eighteen years, an allowance equal to that paid or that would be paid to the spouse shall be paid to the child or children until such age is attained; or

- (b) leaving no spouse but leaving a child or children under the age of eighteen years, an allowance equal to the allowance that would have been paid to the spouse of the member under clause (a) if the spouse had survived the member shall be paid to the child or children until such age is attained.

Option

(3) The spouse,

- (a) of a person who had elected under section 18 to take a deferred allowance at the age when he or she would satisfy the sixty year rule but who died before satisfying the rule; or
- (b) of a person who was eligible to make an election to take a deferred or an immediate allowance under section 18 but died before making the election,

at any time may elect to take a deferred allowance, in which case, commencing on the day that the person would have satisfied the sixty year rule had he or she lived, the spouse shall be paid during his or her lifetime an allowance equal to,

- (c) 60 per cent of the allowance to which the person would have been entitled at that time; and
- (d) in respect of each child under the age of eighteen years, to a maximum of three children of the person, 10 per cent of the allowance to which the person would have been entitled at that time,

or may elect to take an immediate allowance, in which case the spouse shall be paid during his or her lifetime an allowance equal to the amount calculated in accordance with clauses (c) and (d) reduced actuarially in accordance with the tables prescribed by the regulations, which the person would have been entitled to receive at the time of the spouse's election.

Idem

- (4) Where a person referred to in clause (3) (a) or (b) dies leaving no spouse but leaving a child or children under the age of eighteen years, an allowance equal to the immediate allowance provided for in subsection (3), reduced actuarially in accordance with the tables prescribed by the regulations for the purposes of subsection (3), shall be paid to the child or children until such age is attained.

Exception
for higher
education

- (5) For the purposes of this section, a person who has attained the age of eighteen years but has not attained the

age of twenty-five years and who is in full-time attendance at a school, college, university or other institution that is recognized by the Board of Internal Economy for the purposes of this section as a place of higher education shall be deemed not to have attained the age of eighteen years. 1977, c. 27, s. 2.

20.—(1) An allowance under section 18 shall be suspended while the person entitled thereto is a member. Suspension of allowance

(2) Where a person whose allowance has been suspended under subsection (1) again ceases to be a member, his allowance shall be recalculated under section 18 having regard to any additional contributory service as a member performed while his allowance was suspended. 1973, c. 152, s. 20. Recalculation of allowance

21.—(1) A person who makes contributions under this Part and who ceases to be a member before being eligible for an allowance is entitled to a refund of an amount equal to the amount of his contributions with interest thereon at the rate of 6 per cent per annum and, in the event of his death, the same refund shall be paid to his personal representative. Refunds

(2) Where a person who is in receipt of an allowance dies and no person becomes entitled to an allowance under section 19, his personal representative is entitled to a refund equal to the amount of the difference between the amount of his contributions with interest thereon at the rate of 6 per cent per annum up to the time he commenced to receive the allowance and the amount of the allowance paid to him up to the time of his death. 1973, c. 152, s. 21 (1, 2). Idem

(3) A refund under subsection (1) to a former contributor shall be made only after the Speaker receives an application therefor in writing from the former contributor. 1973, c. 152, s. 21 (3); 1975, c. 89, s. 5. Application

22. A person who has received a refund under subsection 21 (1) and who again becomes eligible to contribute under this Act may pay to the Treasurer the amount of the refund with interest at the rate of 6 per cent per annum and thereupon he is entitled to credit for the amount so paid. 1973, c. 152, s. 22. Reinstatement after refund

PART III

23.—(1) Where a former member of the House of Commons of Canada is a contributor under this Act and Service as member of House of Commons

provided he is not entitled to or receiving an allowance in respect of his service as a member of the House of Commons of Canada, he may count such service for the purposes of this Act if he pays into the Legislative Assembly Retirement Allowances Account an amount equal to the amount he received as a refund of his contributions to the account maintained to provide superannuation benefits for members of the House of Commons of Canada, with interest at the rate of 6 per cent per annum.

Credit under
Part I or II

(2) Where an amount is paid into the Account under subsection (1), a contributor under Part I is entitled to have such amount, exclusive of interest, credited to his contributions under Part I, and a contributor under Part II is entitled to count, for the purposes of Part II, the period of service represented by the amount paid into the Account. 1973, c. 152, s. 23.

Previous
service,
members'
election

24.—(1) A member who was not a member on the 1st day of April, 1960, may, within ninety days from the day upon which the Assembly first is in session after he becomes a member, elect in writing to contribute under this Act in respect of any part of any period of service as a member previous to the 1st day of April, 1960, but the period or periods shall be chosen retrogressively from the date of such election.

Establish-
ment of
credit,
members

(2) A member who elects to contribute in respect of a period of previous service as a member shall at the time of such election pay to the Treasurer an amount equal to the amount that he would have been required to contribute as a member had the Act been in force and applicable to him during such period, and thereupon he is entitled to credit for the payment so made.

Instalment
payments,
members

(3) Notwithstanding subsection (2), any amount required to be paid under that subsection may be paid in equal instalments over a period not exceeding three years commencing at the time of his election under that subsection.

Idem

(4) Where a member who is contributing under subsection (3) ceases to be a member or dies before completing his payments thereunder, he or his legal representative, as the case may be, may pay forthwith the balance outstanding. 1973, c. 152, s. 24.

Previous
service,
minister's
election

25.—(1) A minister who was not a minister on the 1st day of April, 1960, may, within ninety days from the

day upon which he becomes a minister, elect in writing to contribute under this Act in respect of any part of any period of service as a minister previous to the 1st day of April, 1960, but the period or periods shall be chosen retrogressively from the date of such election.

(2) A minister who elects to contribute in respect of a period of previous service as a minister shall at the time of such election pay to the Treasurer an amount equal to the amount that he would have been required to contribute as a minister had the Act been in force and applicable to him during such period, and thereupon he is entitled to credit for the payment so made. Establishment of credit, ministers

(3) Notwithstanding subsection (2), any amount required to be paid under that subsection may be paid in equal instalments over a period not exceeding three years commencing at the time of his election under that subsection. Instalment payments, ministers

(4) Where a minister who is contributing under subsection (3) ceases to be a member or dies before completing his payments thereunder, he or his legal representative, as the case may be, may pay forthwith the balance outstanding. 1973, c. 152, s. 25. Idem

26. The Speaker, for the purpose of augmenting from time to time allowances being paid under this Act may, by order, with the approval of the Board of Internal Economy, provide for the payment of supplementary benefits to persons receiving allowances under this Act and prescribe the amounts of such benefits, the times at which they shall be paid and the classes of persons entitled thereto. 1975, c. 89, s. 6. Augmentation of allowances

27. All contributions and interest received under this Act shall be credited to the Consolidated Revenue Fund and all payments of allowances and refunds and interest are a charge against the Consolidated Revenue Fund. 1973, c. 152, s. 26. Payments into and out of Consolidated Revenue Fund

28.—(1) The Treasurer shall establish in the Consolidated Revenue Fund an account to be known as the Legislative Assembly Retirement Allowances Account in which shall be entered all receipts and disbursements under this Act. 1973, c. 152, s. 27 (1). Special account

(2) The Treasurer shall pay annually from the Consolidated Revenue Fund into the Legislative Assembly Annual payments into special account

Retirement Allowances Account such sum as the Lieutenant Governor in Council may direct to assist in defraying the cost of allowances and supplementary benefits under this Act. 1973, c. 152, s. 27 (2); 1975, c. 89, s. 7.

Application of
R.S.O. 1980,
c. 419

29. Section 34 of the *Public Service Superannuation Act* applies with necessary modifications to any moneys payable to any person under this Act. 1973, c. 152, s. 28.

Recipients
of allowances,
etc., not dis-
qualified
R.S.O. 1980,
c. 235

30. Notwithstanding anything in the *Legislative Assembly Act* or any other Act, the application of this Act to a person does not render him ineligible as a member of the Assembly or disqualify him from sitting and voting therein. 1973, c. 152, s. 29.

Teachers'
rights not
affected
R.S.O. 1980,
c. 494

31. Notwithstanding subclause 1 (1) (d) (xvi) of the *Teachers' Superannuation Act*, this Act does not affect the rights of a member under the *Teachers' Superannuation Act*. 1973, c. 152, s. 30.

Regulations

32. The Lieutenant Governor in Council may make regulations,

- (a) respecting the manner and times of payment of instalments under subsection 24 (3) and subsection 25 (3);
- (b) prescribing tables for the purposes of subsection 6 (4), subsection 9 (4), subsection 18 (4) and subsection 19 (3);
- (c) respecting annuities under clause 16 (2) (b). 1973, c. 152, s. 31.

CHAPTER 237

Libel and Slander Act

INTERPRETATION

1.—(1) In this Act,

Interpre-
tation

(a) “broadcasting” means the dissemination of writing, signs, signals, pictures and sounds of all kinds, intended to be received by the public either directly or through the medium of relay stations, by means of,

(i) any form of wireless radioelectric communication utilizing Hertzian waves, including radiotelegraph and radiotelephone, or

(ii) cables, wires, fibre-optic linkages or laser beams,

and “broadcast” has a corresponding meaning.

(b) “newspaper” means a paper containing public news, intelligence, or occurrences or remarks or observations thereon, or containing only, or principally, advertisements, printed for distribution to the public and published periodically, or in parts or numbers, at least twelve times a year. R.S.O. 1970, c. 243, s. 1 (1); 1980, c. 35, s. 1.

(2) Any reference to words in this Act shall be construed as including a reference to pictures, visual images, gestures and other methods of signifying meaning. R.S.O. 1970, c. 243, s. 1 (2).

Meaning of
words
extended

LIBEL

2. Defamatory words in a newspaper or in a broadcast shall be deemed to be published and to constitute libel. R.S.O. 1970, c. 243, s. 2.

What
constitutes
libel

3.—(1) A fair and accurate report in a newspaper or in a broadcast of any of the following proceedings that are open to the public is privileged, unless it is proved that the publication thereof was made maliciously:

Privileged
reports

1. The proceedings of any legislative body or any part or committee thereof in the British Commonwealth

that may exercise any sovereign power acquired by delegation or otherwise.

2. The proceedings of any administrative body that is constituted by any public authority in Canada.
3. The proceedings of any commission of inquiry that is constituted by any public authority in the Commonwealth.
4. The proceedings of any organization whose members, in whole or in part, represent any public authority in Canada.

Idem

(2) A fair and accurate report in a newspaper or in a broadcast of the proceedings of a meeting *bona fide* and lawfully held for a lawful purpose and for the furtherance of discussion of any matter of public concern, whether the admission thereto is general or restricted, is privileged, unless it is proved that the publication thereof was made maliciously.

Publicity releases

(3) The whole or a part or a fair and accurate synopsis in a newspaper or in a broadcast of any report, bulletin, notice or other document issued for the information of the public by or on behalf of any body, commission or organization mentioned in subsection (1) or any meeting mentioned in subsection (2) is privileged, unless it is proved that the publication thereof was made maliciously.

Decisions, etc., of certain types of association

(4) A fair and accurate report in a newspaper or in a broadcast of the findings or decision of any of the following associations, or any part or committee thereof, being a finding or decision relating to a person who is a member of or is subject, by virtue of any contract, to the control of the association, is privileged, unless it is proved that the publication thereof was made maliciously:

1. An association formed in Canada for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered by its constitution to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any persons subject to such control or adjudication.
2. An association formed in Canada for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its

constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession.

3. An association formed in Canada for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercising of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime.

(5) Nothing in this section authorizes any blasphemous, seditious or indecent matter in a newspaper or in a broadcast. Improper matter

(6) Nothing in this section limits or abridges any privilege now by law existing or protects the publication of any matter not of public concern or the publication of which is not for the public benefit. Saving

(7) The protection afforded by this section is not available as a defence in an action for libel if the plaintiff shows that the defendant refused to insert in the newspaper or to broadcast, as the case may be, a reasonable statement of explanation or contradiction by or on behalf of the plaintiff. R.S.O. 1970, c. 243, s. 3. When defendant refuses to publish explanation

4.—(1) A fair and accurate report without comment in a newspaper or in a broadcast of proceedings publicly heard before a court of justice, if published in the newspaper or broadcast contemporaneously with such proceedings, is absolutely privileged unless the defendant has refused or neglected to insert in the newspaper in which the report complained of appeared or to broadcast, as the case may be, a reasonable statement of explanation or contradiction by or on behalf of the plaintiff. Report of proceedings in court

(2) Nothing in this section authorizes any blasphemous, seditious or indecent matter in a newspaper or in a broadcast. R.S.O. 1970, c. 243, s. 4. Improper matter

5.—(1) No action for libel in a newspaper or in a broadcast lies unless the plaintiff has, within six weeks after the alleged libel has come to his knowledge, given to the defendant notice in writing, specifying the matter complained of, which shall be served in the same manner as a statement of claim or by delivering it to a grown-up person at the chief office of the defendant. Notice of action

Where plaintiff to recover only actual damages

(2) The plaintiff shall recover only actual damages if it appears on the trial,

- (a) that the alleged libel was published in good faith;
- (b) that the alleged libel did not involve a criminal charge;
- (c) that the publication of the alleged libel took place in mistake or misapprehension of the facts; and
- (d) that a full and fair retraction of any matter therein alleged to be erroneous,
 - (i) was published either in the next regular issue of the newspaper or in any regular issue thereof published within three days after the receipt of the notice mentioned in subsection (1) and was so published in as conspicuous a place and type as was the alleged libel, or
 - (ii) was broadcast either within a reasonable time or within three days after the receipt of the notice mentioned in subsection (1) and was so broadcast as conspicuously as was the alleged libel.

Case of candidate for public office

(3) This section does not apply to the case of a libel against any candidate for public office unless the retraction of the charge is made in a conspicuous manner at least five days before the election. R.S.O. 1970, c. 243, s. 5.

Limitation of action

6. An action for a libel in a newspaper or in a broadcast shall be commenced within three months after the libel has come to the knowledge of the person defamed, but, where such an action is brought within that period, the action may include a claim for any other libel against the plaintiff by the defendant in the same newspaper or the same broadcasting station within a period of one year before the commencement of the action. R.S.O. 1970, c. 243, s. 6.

Application of ss. 5 (1), 6

7. Subsection 5 (1) and section 6 apply only to newspapers printed and published in Ontario and to broadcasts from a station in Ontario. R.S.O. 1970, c. 243, s. 7.

Publication of name of publisher, etc.

8.—(1) No defendant in an action for a libel in a newspaper is entitled to the benefit of sections 5 and 6 unless the names of the proprietor and publisher and the address of publication are stated either at the head of the editorials or on the front page of the newspaper.

(2) The production of a printed copy of a newspaper is admissible in evidence as *prima facie* proof of the publication of the printed copy and of the truth of the statements mentioned in subsection (1).

Copy of newspaper to be *prima facie* evidence

(3) Where a person, by registered letter containing his address and addressed to a broadcasting station, alleges that a libel against him has been broadcast from the station and requests the name and address of the owner or operator of the station or the names and addresses of the owner and the operator of the station, sections 5 and 6 do not apply with respect to an action by such person against such owner or operator for the alleged libel unless the person whose name and address are so requested delivers the requested information to the first-mentioned person, or mails it by registered letter addressed to him, within ten days from the date on which the first-mentioned registered letter is received at the broadcasting station. R.S.O. 1970, c. 243, s. 8.

Where ss. 5, 6 not to apply

9.—(1) In an action for a libel in a newspaper, the defendant may plead in mitigation of damages that the libel was inserted therein without actual malice and without gross negligence and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted in such newspaper a full apology for the libel or, if the newspaper in which the libel appeared is one ordinarily published at intervals exceeding one week, that he offered to publish the apology in any newspaper to be selected by the plaintiff.

Newspaper libel, plea in mitigation of damages

(2) In an action for a libel in a broadcast, the defendant may plead in mitigation of damages that the libel was broadcast without actual malice and without gross negligence and that before the commencement of the action, or at the earliest opportunity afterwards, he broadcast a full apology for the libel. R.S.O. 1970, c. 243, s. 9.

Broadcast libel, plea in mitigation of damages

10. In an action for a libel in a newspaper or in a broadcast, the defendant may prove in mitigation of damages that the plaintiff has already brought action for, or has recovered damages, or has received or agreed to receive compensation in respect of a libel or libels to the same purport or effect as that for which such action is brought. R.S.O. 1970, c. 243, s. 10.

Evidence in mitigation of damages

11. A defendant may pay into court with his defence a sum of money by way of amends for the injury sustained by the publication of any libel to which sections 5 and 9 apply, and except so far as regards the additional facts hereinbefore required to be pleaded by a defendant, such payment has the same effect as payment into court in other cases. R.S.O. 1970, c. 243, s. 11.

Payment into court

Consolidation of different actions for same libel

12.—(1) The court, upon an application by two or more defendants in any two or more actions for the same or substantially the same libel, or for a libel or libels the same or substantially the same in different newspapers or broadcasts, brought by the same person or persons, may make an order for the consolidation of such actions so that they will be tried together, and, after such order has been made and before the trial of such actions, the defendants in any new actions instituted by the same person or persons in respect of any such libel or libels are also entitled to be joined in the common action upon a joint application being made by such new defendants and the defendants in the actions already consolidated.

Assessment of damages and apportionment of damages and costs

(2) In a consolidated action under this section, the jury shall assess the whole amount of the damages, if any, in one sum, but a separate verdict shall be taken for or against each defendant in the same way as if the actions consolidated had been tried separately, and, if the jury finds a verdict against the defendant or defendants in more than one of the actions so consolidated, the jury shall apportion the amount of the damages between and against the last-mentioned defendants, and the judge at the trial, in the event of the plaintiff being awarded the costs of the action, shall thereupon make such order as he considers just for the apportionment of the costs between and against such defendants.

Application

(3) This section does not apply where the libel or libels were contained in an advertisement. R.S.O. 1970, c. 243, s. 12.

Security for costs

13.—(1) In an action for a libel in a newspaper or in a broadcast, the defendant may, at any time after the delivery of the statement of claim or the expiry of the time within which it should have been delivered, apply to the court for security for costs, upon notice and an affidavit by the defendant or his agent showing the nature of the action and of the defence, that the plaintiff is not possessed of property sufficient to answer the costs of the action in case judgment is given in favour of the defendant, that the defendant has a good defence on the merits and that the statements complained of were made in good faith, or that the grounds of action are trivial or frivolous, and the court may make an order for the plaintiff to give security for costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of Ontario, and the order is a stay of proceedings until the security is given.

Where libel involves a criminal charge

(2) Where the alleged libel involves a criminal charge, the defendant is not entitled to security for costs under this section unless he satisfies the court that the action is trivial

or frivolous, or that the circumstances which under section 5 entitle the defendant at the trial to have the damages restricted to actual damages appear to exist, except the circumstances that the matter complained of involves a criminal charge.

(3) For the purpose of this section, the plaintiff or the defendant or their agents may be examined upon oath at any time after the delivery of the statement of claim. Examination of parties

(4) An order made under this section by a judge of the Supreme Court is final and is not subject to appeal, but, where the order is made by a local judge, an appeal therefrom lies to a judge of the Supreme Court whose order is final and is not subject to appeal. R.S.O. 1970, c. 243, s. 13. When order of judge respecting security final

14. An action for a libel in a newspaper or in a broadcast shall be tried in the county where the chief office of the newspaper or broadcasting station is, or in the county where the plaintiff resides at the time the action is brought; but, upon the application of either party, the court may direct the action to be tried, or the damages to be assessed, in any other county if it appears to be in the interests of justice or that it will promote a fair trial, and may impose such terms as to the payment of witness fees and otherwise as seem proper. R.S.O. 1970, c. 243, s. 14. Place of trial

15. On the trial of an action for libel, the jury may give a general verdict upon the whole matter in issue in the action and shall not be required or directed to find for the plaintiff merely on proof of publication by the defendant of the alleged libel and of the sense ascribed to it in the action, but the court shall, according to its discretion, give its opinion and directions to the jury on the matter in issue as in other cases, and the jury may on such issue find a special verdict, if they think fit so to do, and the proceedings after verdict, whether general or special, shall be the same as in other cases. R.S.O. 1970, c. 243, s. 15. Verdicts

16. An agreement for indemnifying any person against civil liability for libel is not unlawful. R.S.O. 1970, c. 243, s. 16. Agreements for indemnity

SLANDER

17. In an action for slander for defamatory words spoken of a woman imputing unchastity or adultery, it is not necessary to allege in the plaintiff's statement of claim or to prove that special damage resulted to the plaintiff from the utterance of Slander of women

such words, and the plaintiff may recover damages without averment or proof of special damage. R.S.O. 1970, c. 243, s. 17.

Slander
affecting
official
professional
or business
reputation

18. In an action for slander for words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication thereof, it is not necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business, and the plaintiff may recover damages without averment or proof of special damage. R.S.O. 1970, c. 243, s. 18.

Slander of
title, etc.

19. In an action for slander of title, slander of goods or other malicious falsehood, it is not necessary to allege or prove special damage,

- (a) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form; or
- (b) if the words upon which the action is founded are calculated to cause pecuniary damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him at the time of the publication,

and the plaintiff may recover damages without averment or proof of special damage. R.S.O. 1970, c. 243, s. 19.

Security
for costs

20.—(1) In an action for slander, the defendant may, at any time after the delivery of the statement of claim or the expiry of the time within which it should have been delivered, apply to the court for security for costs, upon notice and an affidavit by the defendant or his agent showing the nature of the action and of the defence, that the plaintiff is not possessed of property sufficient to answer the costs of the action in case judgment is given in favour of the defendant, that the defendant has a good defence on the merits, or that the grounds of action are trivial or frivolous, and the court may make an order for the plaintiff to give security for costs, which shall be given in accordance with the practice in cases where a plaintiff resides out of Ontario, and the order is a stay of proceedings until the security is given.

Examina-
tion of
parties

(2) For the purpose of this section, the plaintiff or the defendant may be examined upon oath at any time after the delivery of the statement of claim. R.S.O. 1970, c. 243, s. 20.

LIBEL AND SLANDER

21. In an action for libel or slander, the plaintiff may aver ^{Averments} that the words complained of were used in a defamatory sense, specifying the defamatory sense without any prefatory averment to show how the words were used in that sense, and the averment shall be put in issue by the denial of the alleged libel or slander, and, where the words set forth, with or without the alleged meaning, show a cause of action, the statement of claim is sufficient. R.S.O. 1970, c. 243, s. 21.

22. In an action for libel or slander where the defendant ^{Apologies} has pleaded a denial of the alleged libel or slander, only, or has suffered judgment by default, or judgment has been given against him on motion for judgment on the pleadings, he may give in evidence, in mitigation of damages, that he made or offered a written apology to the plaintiff for such libel or slander before the commencement of the action, or, if the action was commenced before there was an opportunity of making or offering such apology, that he did so as soon afterwards as he had an opportunity. R.S.O. 1970, c. 243, s. 22.

23. In an action for libel or slander for words containing ^{Justification} two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges. R.S.O. 1970, c. 243, s. 23.

24. In an action for libel or slander for words consisting ^{Fair comment} partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved. R.S.O. 1970, c. 243, s. 24.

25. Where the defendant published defamatory matter that is ^{Fair comment} an opinion expressed by another person, a defence of fair comment by the defendant shall not fail for the reason only that the defendant or the person who expressed the opinion, or both, did not hold the opinion, if a person could honestly hold the opinion. 1980, c. 35, s. 2.

CHAPTER 238

Lieutenant Governor Act

1. In matters within the jurisdiction of the Legislature, all powers, authorities and functions that, in respect of like matters, were vested in or exercisable by the governors or lieutenant governors of the several provinces now forming part of Canada or any of the provinces, under commissions, instructions or otherwise, at or before the passing of *The British North America Act, 1867*, are, so far as the Legislature has power thus to enact, vested in and exercisable by the Lieutenant Governor or Administrator for the time being of the Province of Ontario, in the name of Her Majesty or otherwise as the case requires, subject always to the Royal Prerogative as heretofore. R.S.O. 1970, c. 244, s. 1.

Powers
vested in
Lieutenant
Governor

1867, c. 3
(Imp.)

2. Section 1 shall be deemed to include the power of commuting and remitting sentences for offences against the laws of Ontario or offences over which the legislative authority of the Province of Ontario extends. R.S.O. 1970, c. 244, s. 2.

Power to
remit
sentences

3. The Lieutenant Governor for the time being is a corporation sole, and all bonds, recognizances and other instruments by law required to be taken to him in his public capacity shall be taken to him by his name of office, and may be sued for and recovered by him by his name of office, and the same shall not in any case go to or vest in the personal representatives of the Lieutenant Governor during whose government the same were so taken. R.S.O. 1970, c. 244, s. 3.

Lieutenant
Governor a
corporation
sole

4. The Lieutenant Governor may, with the advice and consent of the Executive Council, from time to time appoint any person or persons, jointly or severally, to be his deputy or deputies for Ontario or any part or parts thereof, for the purpose of executing marriage licences, money warrants and commissions under any Act of the Legislature. R.S.O. 1970, c. 244, s. 4.

Power to
appoint
deputies for
certain
purposes

CHAPTER 239

Lightning Rods Act

1. In this Act,

Interpre-
tation

- (a) "Fire Marshal" means the Fire Marshal of Ontario;
- (b) "inspector" means an inspector appointed under this Act;
- (c) "lightning rods" means the points, cables, groundings and other apparatus installed or to be installed to protect buildings and structures from damage by lightning;
- (d) "regulations" means the regulations made under this Act;
- (e) "Treasurer" means the Treasurer of Ontario and Minister of Economics. R.S.O. 1970, c. 245, s. 1; 1972, c. 3, s. 17 (1).

2. No person shall offer for sale, sell or install lightning rods unless licensed to do so by the Fire Marshal under this Act. R.S.O. 1970, c. 245, s. 2.

Sellers, etc.,
of lightning
rods to be
licensed

3.—(1) Upon receipt of,

Power to
license

- (a) an application in the prescribed form for a licence to offer for sale, sell and install lightning rods, containing a sworn statement of the amount received from the sale of lightning rods in Ontario during the previous licence year and a statement of the specifications of the lightning rods to be offered for sale, sold and installed during the licence year;
- (b) a licence fee computed at four-fifths of 1 per cent of the amount received from the sale of lightning rods in Ontario during the preceding licence year, and in addition the sum of \$50, payable to the Treasurer; and
- (c) samples of the lightning rods to be offered for sale, sold and installed during the licence year, or such parts thereof as may be required by the Fire Marshal,

the Fire Marshal shall, subject to subsection (3), issue to the applicant a licence to offer for sale, sell and install lightning rods, and the licence shall remain in force until the 31st day of December next after the date of issue unless it is sooner suspended or revoked. R.S.O. 1970, c. 245, s. 3 (1); 1971, c. 50, s. 51 (1).

What may
be sold, etc.

(2) No licensee under this section shall offer for sale, sell or install lightning rods other than those in respect of which the licence was issued. R.S.O. 1970, c. 245, s. 3 (2).

Refusal
to issue

(3) The Fire Marshal may, after hearing the applicant, refuse to issue a licence under this section where,

- (a) the applicant is not competent to install lightning rods properly;
- (b) the lightning rods to be offered for sale, sold or installed under the licence are not of adequate quality or serviceability; or
- (c) the past conduct of the applicant affords reasonable grounds for belief that he will not carry on operations authorized by the licence in accordance with law and with integrity and honesty. 1971, c. 50, s. 51 (2).

Agents

4.—(1) Upon receipt of,

- (a) an application in the prescribed form from a licensee under section 3 for a licence for the person named therein, who shall be a resident of Ontario, to act as an agent of such licensee, containing a statement in writing from the person named therein giving the address of his place of residence and place of business, his experience in connection with lightning rods, and his financial standing with any licensee under section 3 for whom he has acted as agent; and
- (b) a licence fee of \$3 payable to the Treasurer,

the Fire Marshal shall, subject to subsection (3), issue a licence to him to act as agent for the licensee, and the licence remains in force until the 31st day of December next after the date of issue unless it is sooner suspended or revoked. R.S.O. 1970, c. 245, s. 4 (1); 1971, c. 50, s. 51 (3).

What may
be sold, etc.,
by agents

(2) No licensed agent shall offer for sale, sell or install lightning rods other than those in respect of which his principal is licensed. R.S.O. 1970, c. 245, s. 4 (2).

(3) The Fire Marshal may, after hearing the applicant, ^{Refusal to issue} refuse to issue a licence under this section where,

- (a) the applicant is not competent to install lightning rods properly; or
- (b) the past conduct of the applicant affords reasonable grounds for belief that he will not carry on operations authorized by the licence in accordance with law and with integrity and honesty. 1971, c. 50, s. 51 (4).

5. Where, within the time prescribed therefor or, if no ^{Continuation of licence pending issue of new licence} time is prescribed, prior to the expiry of his licence, the holder of a licence under this Act has applied for renewal of his licence and paid the prescribed fee, his licence shall be deemed to continue,

- (a) until the renewal is granted; or
- (b) until the application has been finally determined by the Fire Marshal, or where renewal is refused, until fourteen days after mailing of the decision of the Fire Marshal, or where application is made for a hearing by a judge, such later time as the judge may fix. 1971, c. 50, s. 51 (5).

6.—(1) The Fire Marshal may, after a hearing, ^{Suspension or revocation of licence} suspend or revoke a licence if the licensee has contravened any provision of this Act or the regulations and his conduct affords reasonable grounds for belief that he will not comply with this Act and the regulations in the operations authorized by the licence.

(2) The notice of a hearing required under subsection (1) ^{Notice of hearing} shall afford to the licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the retention of the licence.

(3) An applicant or licensee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be introduced or any report the contents of which will be given in evidence at the hearing. 1971, c. 50, s. 51 (6). ^{Examination of documentary evidence}

7.—(1) Where an applicant or licensee, as the case may be, is dissatisfied with a decision of the Fire Marshal under section 3, 4 or 6, he may, within ten days after receipt of the notice of the decision, apply to the judge of the county or district court of the county or district in which he resides for a hearing by the judge. ^{Application for hearing by county judge}

Extension of
time for
application

(2) A judge to whom application is made for a hearing under subsection (1) may extend the time for making the application, either before or after expiration of the time fixed in subsection (1), where he is satisfied that there are *prima facie* grounds for granting relief to the applicant pursuant to a hearing and that there are reasonable grounds for applying for the extension and may give such directions as he considers proper consequent upon the extension.

Recording
of evidence

(3) The oral evidence taken before the judge at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the county court.

Findings
of fact

(4) The findings of fact of a judge pursuant to a hearing under this section shall be based exclusively on evidence admissible under the law of evidence or matters that may be judicially noticed.

Powers
of judge

(5) On an application under subsection (1), the judge may, after a hearing *de novo* to which the applicant, the Fire Marshal and such other persons as the judge may specify are parties, confirm, vary or reverse the decision of the Fire Marshal and may direct the Fire Marshal to do any act the Fire Marshal is authorized to do under this Act and as the judge considers proper. 1971, c. 50, s. 51 (7), *part.*

Appeal to
court

8.—(1) Any party to the proceedings before a judge under this Act may appeal from the decision or direction of the judge to the Divisional Court in accordance with the rules of court.

Record to
be filed
in court

(2) Where notice of an appeal is served under this section, the judge shall forthwith file in the Divisional Court the record of the proceedings before him in which the decision was made or direction was given which, together with the transcript of the evidence before the judge if it is not part of the record of the judge, shall constitute the record in the appeal.

Fire Marshal
entitled
to be heard

(3) The Fire Marshal is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

Powers of
court

(4) The Divisional Court may affirm the decision of the judge appealed from or may rescind it and make such new decision as the court considers proper, and may order the Fire Marshal to do any act or thing he is authorized to do under this Act and as the court considers proper or the court may refer the matter back to the judge for rehearing, in whole or

in part, in accordance with such directions as the court considers proper. 1971, c. 50, s. 51 (7), *part*.

9. Every person offering for sale, selling or installing lightning rods shall exhibit his licence, ^{Duty to exhibit licence}

- (a) to every person to whom he offers to sell or sells, or for whom he installs lightning rods; and
- (b) upon demand to any mayor, reeve, fire chief, district deputy fire marshal, assistant to the Fire Marshal, fire prevention officer or police officer. R.S.O. 1970, c. 245, s. 7.

10.—(1) Every person who installs lightning rods on any building or structure shall, upon completion of the work, make a certificate of installation in triplicate in the prescribed form showing, ^{Certificate of installation}

- (a) his name, address and licence number and, where he is an agent, the name, address and licence number of his principal;
- (b) the name and address of the owner of the building or structure;
- (c) the location of the building or structure;
- (d) a diagram of the building or structure marking the location of each grounding;
- (e) the nature and condition of the soil at each grounding;
- (f) the method of each grounding,

and certifying that the facts shown are true and that the installation has been made in accordance with this Act and the regulations, and, after signing, he shall present the certificate for the signature of the owner or his agent to confirm that the nature and condition of the soil and the method of each grounding are as described.

(2) Every person who makes a certificate of installation shall give a copy thereof to the owner or his agent and forward a copy to the Fire Marshal. R.S.O. 1970, c. 245, s. 8. ^{Disposal of copies}

11. Every person who fails to comply with this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$200 or to imprisonment for a term of not more than six months for each offence, or to both fine and imprisonment. R.S.O. 1970, c. 245, s. 9. ^{Offence}

Non-
conforming
installations

12.—(1) Where upon inspection an installation of lightning rods is found not to conform with this Act and the regulations, the licensee under section 3 who made the installation shall, within sixty days from the receipt of the inspector's report or such further period as is allowed by the Fire Marshal, make such alterations or additions thereto as the inspector considers necessary to make the installation conform with this Act and the regulations, but this subsection does not apply where the installation is found not to so conform by reason of alterations or additions made thereto or to the building or structure other than by the licensee.

Conforming
installations

(2) Where upon inspection an installation of lightning rods is found to conform with this Act and the regulations, the inspector may attach a seal indicating that the installation is at the time of the inspection in conformity with this Act and the regulations. R.S.O. 1970, c. 245, s. 10.

Hearing

(3) Where a licensee is dissatisfied with the report of an inspector under subsection (1), he may, within ten days after receipt of the report, request the Fire Marshal to hold a hearing.

Parties

(4) Pursuant to a request under subsection (1), the Fire Marshal shall hold a hearing to determine whether the inspector's report is proper and the inspector, licensee and such other persons as the Fire Marshal may specify are parties to the proceedings.

Decision
of Fire
Marshal

(5) After a hearing under this section, the Fire Marshal may confirm, vary or reverse the report of the inspector and may direct the inspector to do any act the inspector is authorized to do under this Act and as the Fire Marshal considers proper. 1971, c. 50, s. 51 (8).

Right to
recover for
loss

13.—(1) Where lightning rods that were installed on a building or structure by a licensed person have been installed for fewer than ten years and the owner thereof has suffered loss by reason of damage by lightning to the lightning rods, building or structure, and where no alterations or additions or repairs that affect the proper operation of the lightning rods have been made to the lightning rods or to the building or structure by persons other than the licensee, the owner may bring an action against the licensee for recovery of the amount of loss, not exceeding the total cost of the installation.

Notice of
claim,
commence-
ment of
action

(2) Notice of any such claim shall be given to the licensee within thirty days after the loss was suffered, and the action shall be commenced not fewer than sixty days and not more than one year after the loss was suffered. R.S.O. 1970, c. 245, s. 11.

14. Licence fees paid to the Treasurer under this Act shall be added to the special fund for the maintenance of the office of the Fire Marshal. R.S.O. 1970, c. 245, s. 12.

15. The Lieutenant Governor in Council may appoint one or more inspectors to enforce this Act and the regulations. R.S.O. 1970, c. 245, s. 13.

16. This Act does not apply to the installation of lightning rods on a building or structure by the owner or occupant of the building or structure where he himself does the work, or the work is done by his employee or employees under his direction. R.S.O. 1970, c. 245, s. 14.

17. The Lieutenant Governor in Council may make regulations,

- (a) prescribing minimum standards for lightning rods;
- (b) governing the manner of installing lightning rods;
- (c) designating buildings or structures or classes of buildings or structures to which this Act shall not apply;
- (d) prescribing the form of,
 - (i) the application for a licence to offer for sale, sell and install lightning rods,
 - (ii) the licence to offer for sale, sell and install lightning rods,
 - (iii) the application for a licence to act as an agent to offer for sale, sell and install lightning rods,
 - (iv) the licence to act as agent to offer for sale, sell and install lightning rods,
 - (v) the certificate of installation of lightning rods,
 - (vi) the report of the inspector mentioned in subsection 12 (1),
 - (vii) the seal mentioned in subsection 12 (2). R.S.O. 1970, c. 245, s. 15.

CHAPTER 240

Limitations Act

1. In this Act,

Interpre-
tation

- (a) “action” includes an information on behalf of the Crown and any civil proceeding;
- (b) “assurance” means a deed or instrument, other than a will, by which land may be conveyed or transferred;
- (c) “land” includes messuages and all other hereditaments, whether corporeal or incorporeal, chattels and other personal property transmissible to heirs, money to be laid out in the purchase of land, and any share of the same hereditaments and properties or any of them, any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, any possibility, right or title of entry or action, and any other interest capable of being inherited, whether the same estates, possibilities, rights, titles and interest or any of them, are in possession, reversion, remainder or contingency;
- (d) “rent” includes all annuities and periodical sums of money charged upon or payable out of land. R.S.O. 1970, c. 246, s. 1.

PART I

REAL PROPERTY

2. Nothing in this Act interferes with any rule of equity in refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring an action is not barred by virtue of this Act. R.S.O. 1970, c. 246, s. 2.

Refusing
relief
because of
acquiescence
or otherwise

3.—(1) No entry, distress, or action shall be made or brought on behalf of Her Majesty against any person for the recovery of or respecting any land or rent, or of land or for or concerning any revenues, rents, issues or profits, but within sixty years next after the right to make such entry or distress or to bring such action has first accrued to Her Majesty.

Limitation
where the
Crown
interested

Application
of certain
sections to
Crown

(2) Subsections 5 (1), (2), (3), (5), (6), (7), (9), (10), (11) and (12) and sections 6, 8 to 11 and 13 to 15 apply to rights of entry, distress or action asserted by or on behalf of Her Majesty. R.S.O. 1970, c. 246, s. 3.

Limitation
where the
subject
interested

4. No person shall make an entry or distress, or bring an action to recover any land or rent, but within ten years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to some person through whom he claims, or if the right did not accrue to any person through whom he claims, then within ten years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to the person making or bringing it. R.S.O. 1970, c. 246, s. 4.

When right
accrues on
dispossession

5.—(1) Where the person claiming such land or rent, or some person through whom he claims, has, in respect of the estate or interest claimed, been in possession or in receipt of the profits of the land, or in receipt of the rent, and has, while entitled thereto, been dispossessed, or has discontinued such possession or receipt, the right to make an entry or distress or bring an action to recover the land or rent shall be deemed to have first accrued at the time of the dispossession or discontinuance of possession, or at the last time at which any such profits or rent were so received.

On death

(2) Where the person claiming such land or rent claims the estate or interest of a deceased person who continued in such possession or receipt, in respect of the same estate or interest, until the time of his death, and was the last person entitled to such estate or interest who was in such possession or receipt, the right shall be deemed to have first accrued at the time of such death.

On alienation

(3) Where the person claiming such land or rent claims in respect of an estate or interest in possession, granted, appointed or otherwise assured by an assurance to him or some person through whom he claims, by a person being, in respect of the same estate or interest, in the possession or receipt of the profits of the land, or in receipt of the rent, and no person entitled under the assurance has been in possession or receipt, the right shall be deemed to have first accrued at the time at which the person so claiming or the person, through whom he claims, became entitled to such possession or receipt by virtue of the assurance.

As to land
not cultivated
or improved

(4) In the case of land granted by the Crown of which the grantee, his heirs or assigns, by themselves, their servants or agents, have not taken actual possession by residing upon or cultivating some part thereof, and of which some other

person not claiming to hold under such grantee has been in possession, such possession having been taken while the land was in a state of nature, then unless it is shown that the grantee or person claiming under him while entitled to the land had knowledge of it being in the actual possession of such other person, the lapse of ten years does not bar the right of the grantee or any person claiming under him to bring an action for the recovery of the land, but the right to bring an action shall be deemed to have accrued from the time that such knowledge was obtained, but no action shall be brought or entry made after twenty years from the time such possession was taken.

(5) Where a person is in possession or in receipt of the profits of any land, or in receipt of any rent by virtue of a lease in writing, by which a rent amounting to the yearly sum of \$4 or upwards is reserved, and the rent reserved by the lease has been received by some person wrongfully claiming to be entitled to the land or rent in reversion immediately expectant on the determination of the lease, and no payment in respect of the rent reserved by the lease has afterwards been made to the person rightfully entitled thereto, the right of the person entitled to the land or rent, subject to the lease, or of the person through whom he claims to make an entry or distress, or to bring an action after the determination of the lease, shall be deemed to have first accrued at the time at which the rent reserved by the lease was first so received by the person so wrongfully claiming, and no such right shall be deemed to have first accrued upon the determination of the lease to the person rightfully entitled.

Where rent reserved by lease in writing has been wrongfully received

(6) Where a person is in possession or in receipt of the profits of any land, or in receipt of any rent as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover the land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy was received, whichever last happened.

Where tenancy from year to year

(7) Where a person is in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover the land or rent, shall be deemed to have first accrued either at the determination of the tenancy, or at the expiration of one year next after the commencement of the tenancy, at which time the tenancy shall be deemed to have determined.

In the case of a tenant at will

Case of
mortgagor
or *cestui que*
trust—

(8) No mortgagor or *cestui que trust* shall be deemed to be a tenant at will to his mortgagee or trustee within the meaning of subsection (7).

In case of
forfeiture or
breach of
condition

(9) Where the person claiming such land or rent, or the person through whom he claims, has become entitled by reason of any forfeiture or breach of condition, such right shall be deemed to have first accrued when the forfeiture was incurred or the condition broken.

Where
advantage of
forfeiture is
not taken by
remainder
man

(10) Where any right to make an entry or distress, or to bring an action to recover any land or rent, by reason of any forfeiture or breach of condition, has first accrued in respect of any estate or interest in reversion or remainder and the land or rent has not been recovered by virtue of such right, the right to make an entry or distress, or to bring an action to recover the land or rent, shall be deemed to have first accrued in respect of such estate or interest at the time when it became an estate or interest in possession as if no such forfeiture or breach of condition had happened.

In case
of future
estates

(11) Where the estate or interest claimed is an estate or interest in reversion or remainder, or other future estate or interest, and no person has obtained the possession or receipt of the profits of the land, or the receipt of the rent, in respect of such estate or interest, such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession.

Further
provision for
cases of
future
estates

(12) A right to make an entry or distress; or to bring an action to recover any land or rent, shall be deemed to have first accrued, in respect of an estate or interest in reversion or remainder or other future estate or interest at the time at which it became an estate or interest in possession, by the determination of any estate or estates in respect of which the land has been held or the profits thereof or the rent have been received, notwithstanding that the person claiming the land or rent, or some person through whom he claims, has, at any time before to the creation of the estate or estates that have determined, been in the possession or receipt of the profits of the land, or in receipt of the rent. R.S.O. 1970, c. 246, s. 5.

Limitation
in case of
future
estates when
person
entitled to
the parti-
cular estate
out of
possession,
etc.

6.—(1) If the person last entitled to any particular estate on which any future estate or interest was expectant has not been in the possession or receipt of the profits of the land, or in receipt of the rent, at the time when his interest determined, no such entry or distress shall be made and no such action shall be brought by any person becoming entitled in possession to a future estate or interest but within ten years

next after the time when the right to make an entry or distress, or to bring an action for the recovery of the land or rent, first accrued to the person whose interest has so determined, or within five years next after the time when the estate of the person becoming entitled in possession has become vested in possession, whichever of those two periods is the longer.

(2) If the right of any such person to make such entry or distress, or to bring any such action, has been barred, no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will or settlement executed or taking effect after the time when a right to make an entry or distress or to bring an action for the recovery of the land or rent, first accrued to the owner of the particular estate whose interest has so determined, shall make any entry or distress, or bring any action, to recover the land or rent.

The case of bar of future estate and of a subsequent interest created after right of entry, etc., accrued to owner of particular estate

(3) Where the right of any person to make an entry or distress, or to bring an action to recover any land or rent to which he has been entitled for an estate or interest in possession, has been barred by the determination of the period that is applicable in such case, and such person has, at any time during such period, been entitled to any other estate, interest, right or possibility, in reversion, remainder or otherwise, in or to the same land or rent, no entry, distress or action shall be made or brought by such person, or by any person claiming through him, to recover the land or rent in respect of such other estate, interest, right or possibility, unless in the meantime the land or rent has been recovered by some person entitled to an estate, interest or right that has been limited or taken effect after or in defeasance of such estate or interest in possession. R.S.O. 1970, c. 246, s. 6.

Bar of right to future estates acquired after bar of particular estate

7. For the purposes of this Act, an administrator claiming the estate or interest of the deceased person of whose property he has been appointed administrator shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration. R.S.O. 1970, c. 246, s. 7.

When right of action devolves to administrator

8. No person shall be deemed to have been in possession of any land within the meaning of this Act merely by reason of having made an entry thereon. R.S.O. 1970, c. 246, s. 8.

Effect of mere entry

9. No continual or other claim upon or near any land preserves any right of making an entry or distress or of bringing an action. R.S.O. 1970, c. 246, s. 9.

Continual claim

Descent
cast, discon-
tinuance
warranty,
etc.

10. No descent cast, discontinuance or warranty, that has happened or been made since the 1st day of July, 1834, or that may hereafter happen or be made, shall toll or defeat any right of entry or action for the recovery of land. R.S.O. 1970, c. 246, s. 10.

Possession of
one coparcene-
ner, etc.

11. Where any one or more of several persons entitled to any land or rent as coparceners, joint tenants or tenants in common has or have been in possession or receipt of the entirety, or more than his or their undivided share or shares of the land, or of the profits thereof, or of the rent for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of, or by the last-mentioned person or persons or any of them. R.S.O. 1970, c. 246, s. 11.

Possession of
relations

12. Where a relation of the persons entitled as heirs to the possession or receipt of the profits of any land, or to the receipt of any rent, enters into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the persons entitled as heirs. R.S.O. 1970, c. 246, s. 12.

Effect of
acknowl-
edgment in
writing

13. Where any acknowledgment in writing of the title of the person entitled to any land or rent has been given to him or to his agent, signed by the person in possession or in receipt of the profits of the land, or in the receipt of the rent, such possession or receipt of or by the person by whom the acknowledgment was given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent the acknowledgment was given at the time of giving it, and the right of the last-mentioned person, or of any person claiming through him, to make an entry or distress or bring an action to recover the land or rent, shall be deemed to have first accrued at and not before the time at which the acknowledgment, or the last of the acknowledgments, if more than one, was given. R.S.O. 1970, c. 246, s. 13.

Effect of
receipt of
rent

14. The receipt of the rent payable by a lessee, shall, as against such lessee or any person claiming under him, but subject to the lease, be deemed to be the receipt of the profits of the land for the purposes of this Act. R.S.O. 1970, c. 246, s. 14.

Extinguish-
ment of
right at the
end of the
period of
limitation

15. At the determination of the period limited by this Act to any person for making an entry or distress or bringing any action, the right and title of such person to the land or

rent, for the recovery whereof such entry, distress or action, respectively, might have been made or brought within such period, is extinguished. R.S.O. 1970, c. 246, s. 15.

16. Nothing in sections 1 to 15 applies to any waste or vacant land of the Crown, whether surveyed or not, nor to lands included in any road allowance heretofore or hereafter surveyed and laid out or to any lands reserved or set apart or laid out as a public highway where the freehold in any such road allowance or highway is vested in the Crown or in a municipal corporation, commission or other public body, but nothing in this section shall be deemed to affect or pre-judice any right, title or interest acquired by any person before the 13th day of June, 1922. R.S.O. 1970, c. 246, s. 16.

Waste or
vacant land
of Crown
excepted

17.—(1) No arrears of rent, or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, whether it is or is not charged upon land, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress or action but within six years next after the same respectively has become due, or next after any acknowledgment in writing of the same has been given to the person entitled thereto or his agent, signed by the person by whom the same was payable or his agent.

Maximum
of arrears of
rent or
interest
recoverable

(2) This section does not apply to an action for redemption brought by a mortgagor or a person claiming under him. R.S.O. 1970, c. 246, s. 17.

Exception as
to action for
redemption

18. Where a prior mortgagee or other encumbrancer has been in possession of any land, or in the receipt of the profits thereof, within one year next before an action is brought by a person entitled to a subsequent mortgage or other encumbrance on the same land, the person entitled to the subsequent mortgage or encumbrance may recover in the action the arrears of interest that have become due during the whole time that the prior mortgagee or encumbrancer was in such possession or receipt, although the time may have exceeded the term of six years. R.S.O. 1970, c. 246, s. 18.

Exception in
favour of
subsequent
mortgagee
when a prior
mortgagee
has been in
possession

19. Where a mortgagee has obtained the possession or receipt of the profits of any land or the receipt of any rent comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring any action to redeem the mortgage but within ten years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment in writing of the title of the mortgagor, or of his right to redemption, has been given to the mortgagee or to some person claiming his estate, or to

Limitation
where a
mortgagee in
possession

the agent of such mortgagor or person, signed by the mortgagee, or the person claiming through him, and in such case no such action shall be brought but within ten years next after the time at which the acknowledgment, or the last of the acknowledgments if more than one, was given. R.S.O. 1970, c. 246, s. 19.

Acknowledgment to one of several mortgagors

20. Where there are more mortgagors than one or more persons than one claiming through the mortgagor or mortgagors, the acknowledgment, if given to any of such mortgagors or persons, or his or their agent, is as effectual as if it had been given to all such mortgagors or persons. R.S.O. 1970, c. 246, s. 20.

Acknowledgment to one of several mortgagees

21. Where there are more mortgagees than one or more persons than one claiming the estate or interest of the mortgagee or mortgagees, the acknowledgment, signed by one or more of such mortgagees or persons, is effectual only as against the person or persons so signing, and the person or persons claiming any part of the mortgage money or land or rent by, from, or under him, or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and does not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent; and where such of the mortgagees or persons as have given the acknowledgment are entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors are entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money that bears the same proportion to the whole of the mortgage money as the value of the divided part of the land or rent bears to the value of the whole of the land or rent comprised in the mortgage. R.S.O. 1970, c. 246, s. 21.

Limitation where mortgage in arrear

22. Any person entitled to or claiming under a mortgage of land may make an entry or bring an action to recover the land at any time within ten years next after the last payment of any part of the principal money or interest secured by the mortgage, although more than ten years have elapsed since the time at which the right to make such entry or bring such action first accrued. R.S.O. 1970, c. 246, s. 22.

Limitation where money charged upon land and legacies

23.—(1) No action shall be brought to recover out of any land or rent any sum of money secured by any mortgage or lien, or otherwise charged upon or payable out of the land or rent, or to recover any legacy, whether it is or is not charged upon land, but within ten years next after a present right

to receive it accrued to some person capable of giving a discharge for, or release of it, unless in the meantime some part of the principal money or some interest thereon has been paid, or some acknowledgment in writing of the right thereto signed by the person by whom it is payable, or his agent, has been given to the person entitled thereto or his agent, and in such case no action shall be brought but within ten years after the payment or acknowledgment, or the last of the payments or acknowledgments if more than one, was made or given.

(2) Notwithstanding subsection (1), a lien or charge created by the placing of an execution or other process against land in the hands of the sheriff or other officer to whom it is directed, remains in force so long as the execution or other process remains in the hands of the sheriff or officer for execution and is kept alive by renewal or otherwise. R.S.O. 1970, c. 246, s. 23. Execution against land

24. No action shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust. R.S.O. 1970, c. 246, s. 24. Time for recovering charges and arrears of interest not to be enlarged by express trusts for raising same

25. Subject to section 26, no action of dower shall be brought but within ten years from the death of the husband of the doweress, notwithstanding any disability of the doweress or of any person claiming under her. R.S.O. 1970, c. 246, s. 25. Limitation of action of dower

26. Where a doweress has, after the death of her husband, actual possession of the land of which she is dowable, either alone or with an heir or devisee of, or a person claiming by devolution from her husband, the period of ten years within which her action of dower is to be brought shall be computed from the time when such possession of the doweress ceased. R.S.O. 1970, c. 246, s. 26. Time from which right to bring action of dower to be computed

27. No arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action for a longer period than six years next before the commencement of such action. R.S.O. 1970, c. 246, s. 27. Maximum of arrears of dower recoverable

28. In every case of a concealed fraud, the right of a person to bring an action for the recovery of any land or rent of which he or any person through whom he claims may have Cases where fraud remains concealed

been deprived by the fraud shall be deemed to have first accrued at and not before the time at which the fraud was or with reasonable diligence might have been first known or discovered. R.S.O. 1970, c. 246, s. 28.

Case of *bona fide* purchaser for value without notice

29. Nothing in section 28 enables any owner of land or rent to bring an action for the recovery of the land or rent, or for setting aside any conveyance thereof, on account of fraud against any purchaser in good faith for valuable consideration, who has not assisted in the commission of the fraud, and who, at the time that he made the purchase did not know, and had no reason to believe, that any such fraud had been committed. R.S.O. 1970, c. 246, s. 29.

Limitation in case of profits

30. No claim that may be made lawfully at the common law, by custom, prescription or grant, to any profit or benefit to be taken or enjoyed from or upon any land of the Crown, or of any person, except such matters or things as are hereinafter specially provided for, and except rent and services, where the profit or benefit has been actually taken and enjoyed by any person claiming right thereto without interruption for the full period of thirty years, shall be defeated or destroyed by showing only that the profit or benefit was first taken or enjoyed at any time prior to the period of thirty years, but nevertheless the claim may be defeated in any other way by which it is now liable to be defeated, and when the profit or benefit has been so taken and enjoyed for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it appears that it was taken and enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. R.S.O. 1970, c. 246, s. 30.

Right of way easement, etc.

31. No claim that may be made lawfully at the common law, by custom, prescription or grant, to any way or other easement, or to any water course, or the use of any water to be enjoyed, or derived upon, over or from any land or water of the Crown or being the property of any person, when the way or other matter as herein last before-mentioned has been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years shall be defeated or destroyed by showing only that the way or other matter was first enjoyed at any time prior to the period of twenty years, but, nevertheless the claim may be defeated in any other way by which it is now liable to be defeated, and where the way or other matter as herein last before-mentioned has been so enjoyed for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it appears that it was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. R.S.O. 1970, c. 246, s. 31.

32. Each of the respective periods of years mentioned in sections 30 and 31 shall be deemed and taken to be the period next before some action wherein the claim or matter to which such period relates was or is brought into question, and no act or other matter shall be deemed an interruption within the meaning of those sections, unless the same has been submitted to or acquiesced in for one year after the person interrupted has had notice thereof, and of the person making or authorizing the same to be made. R.S.O. 1970, c. 246, s. 32.

How period to be calculated, and what acts deemed an interruption

33. No person shall acquire a right by prescription to the access and use of light or to the access and use of air to or for any dwelling-house, work-shop or other building, but this section does not apply to any such right acquired by twenty years use before the 5th day of March, 1880. R.S.O. 1970, c. 246, s. 33.

Right to access and use of light by prescription abolished

34. In the cases mentioned in and provided for by this Act, of claims to ways, water courses or other easements, no presumption shall be allowed or made in favour or support of any claim upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as is applicable to the case and to the nature of the claim. R.S.O. 1970, c. 246, s. 34.

Necessity for strict proof

35. No easement in respect of wires or cables attached to property or buildings or passing through or carried over such property or buildings shall be deemed to have been acquired or shall hereafter be acquired by prescription or otherwise than by grant from the owner of the property or buildings. R.S.O. 1970, c. 246, s. 35.

Easements not acquired for carrying wires and cables

36. If at the time at which the right of a person to make an entry or distress, or to bring an action to recover any land or rent, first accrues, as herein mentioned, such person is under the disability of minority, mental deficiency, mental incompetency or unsoundness of mind, such person, or the person claiming through him, notwithstanding that the period of ten years or five years, as the case may be, hereinbefore limited has expired, may make an entry or distress, or bring an action, to recover the land or rent at any time within five years next after the time at which the person to whom the right first accrued ceased to be under any such disability, or died, whichever of those two events first happened. R.S.O. 1970, c. 246, s. 36.

Persons under disability at the time when the right of action accrues

37. No entry, distress or action, shall be made or brought by any person, who, at the time at which his right to make any entry or distress, or to bring an action, to recover any land

Utmost allowance for disabilities

or rent first accrued was under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within twenty years next after the time at which the right first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of the twenty years, or although the term of five years from the time at which he ceased to be under any such disability or died, may not have expired. R.S.O. 1970, c. 246, s. 37.

Succession of disabilities

38. Where a person is under any of the disabilities hereinbefore mentioned, at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent first accrues, and dies without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover the land or rent beyond the period of ten years next after the right of such person to make an entry or distress, or to bring an action to recover the land or rent, first accrued or the period of five years next after the time at which such person died, shall be allowed by reason of any disability of any other person. R.S.O. 1970, c. 246, s. 38.

Persons under disability when right accrues

39. The time during which any person otherwise capable of resisting any claim to any of the matters mentioned in sections 30 to 35, is a minor, mentally defective person, mentally incompetent person, of unsound mind, or tenant for life, or during which any action has been pending and has been diligently prosecuted, shall be excluded in the computation of the period mentioned in such sections, except only in cases where the right or claim is thereby declared to be absolute and indefeasible. R.S.O. 1970, c. 246, s. 39.

Exclusion of terms of years, etc., from computation in certain cases

40. Where any land or water upon, over or from which any such way or other easement, water course or use of water has been enjoyed or derived, has been held under or by virtue of any term of life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before-mentioned during the continuance of such term shall be excluded in the computation of the period of forty years mentioned in section 31, if the claim is, within three years next after the end or sooner determination of such term, resisted by any person entitled to any reversion expectant on the determination thereof. R.S.O. 1970, c. 246, s. 40.

Exception as to lands of the Crown not duly surveyed and laid out

41. Nothing in sections 30 to 35 supports or maintains any claim to any profit or benefit to be taken or enjoyed from or upon any land of the Crown, or to any way or other easement, or to any water course or the use of any water to be enjoyed or derived upon, over or from any land or water of the

Crown, unless the land, way, easement, water course or other matter lies and is situate within the limits of some town or township, or other parcel or tract of land duly surveyed and laid out by authority of the Crown. R.S.O. 1970, c. 246, s. 41.

PART II

TRUSTS AND TRUSTEES

42. This Part applies to a trust created by an instrument or an Act of the Legislature heretofore or hereafter executed or passed. R.S.O. 1970, c. 246, s. 42. Application
of Part II

43.—(1) In this section, “trustee” includes an executor, an administrator, a trustee whose trust arises by construction or implication of law as well as an express trustee, and a joint trustee. Interpre-
tation

(2) In an action against a trustee or a person claiming through him, except where the claim is founded upon a fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property or the proceeds thereof, still retained by the trustee, or previously received by the trustee and converted to his use, the following paragraphs apply: Actions
against
trustees

1. All rights and privileges conferred by any statute of limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action if the trustee or person claiming through him had not been a trustee or person claiming through a trustee.
2. If the action is brought to recover money or other property and is one to which no existing statute of limitations applies, the trustee or person claiming through him is entitled to the benefit of, and is at liberty to plead, the lapse of time as a bar to such action in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received; but so nevertheless that the statute shall run against a married woman entitled in possession for her separate use, whether with or without restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary becomes an interest in possession.

Effect of
judgment
upon
rights of
beneficiaries

(3) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought the action and this section had been pleaded. R.S.O. 1970, c. 246, s. 43.

When right
accrues
in case of
express trust

44.—(1) Where land or rent is vested in a trustee upon an express trust, the right of the *cestui que trust* or a person claiming through him to bring an action against the trustee or a person claiming through him to recover the land or rent, shall be deemed to have first accrued, according to the meaning of this Act, at and not before the time at which the land or rent has been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him.

Claim of
cestui que
trust against
trustee

(2) Subject to section 43, no claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitations. R.S.O. 1970, c. 246, s. 44.

PART III

PERSONAL ACTIONS

Limitation
of time for
commencing
particular
actions

45.—(1) The following actions shall be commenced within and not after the times respectively hereinafter mentioned,

- (a) an action for rent, upon an indenture of demise;
 - (b) an action upon a bond, or other specialty, except upon a covenant contained in an indenture of mortgage made on or after the 1st day of July, 1894;
 - (c) an action upon a judgment or recognizance,
- within twenty years after the cause of action arose,
- (d) an action upon an award where the submission is not by specialty;
 - (e) an action for an escape;
 - (f) an action for money levied on execution; or
 - (g) an action for trespass to goods or land, simple contract or debt grounded upon any lending or contract

without specialty, debt for arrears of rent, detinue, replevin or upon the case other than for slander,

within six years after the cause of action arose,

(*h*) an action for a penalty, damages, or a sum of money given by any statute to the Crown or the party aggrieved, within two years after the cause of action arose;

(*i*) an action upon the case for words, within two years after the words spoken;

(*j*) an action for assault, battery, wounding or imprisonment, within four years after the cause of action arose;

(*k*) an action upon a covenant contained in an indenture of mortgage or any other instrument made on or after the 1st day of July, 1894, to repay the whole or part of any moneys secured by a mortgage, within ten years after the cause of action arose or within ten years after the date upon which the person liable on the covenant conveyed or transferred his interest in the mortgaged lands, whichever is later in point of time;

(*l*) an action by a mortgagee against a grantee of the equity of redemption under section 19 of the *Mortgages Act*, within ten years after the cause of action arose;

R.S.O. 1980,
c. 296

(*m*) an action for a penalty imposed by any statute brought by any informer suing for himself alone, or for the Crown as well as himself, or by any person authorized to sue for the same, not being the person aggrieved, within one year after the cause of action arose.

(2) Nothing in this section extends to any action where the time for bringing the action is by any statute specially limited. R.S.O. 1970, c. 246, s. 45.

Where time
specially
limited

46. Every action of account, or for not accounting, or for such accounts as concerns the trade of merchandise between merchant and merchant, their factors and servants, shall be commenced within six years after the cause of action arose, and no claim in respect of a matter that arose more than six years before the commencement of the action is enforceable by action by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of the action. R.S.O. 1970, c. 246, s. 46.

Actions of
account,
etc.

In case of
disability
of plaintiff

47. Where a person entitled to bring an action mentioned in section 45 or 46 is at the time the cause of action accrues a minor, mental defective, mental incompetent or of unsound mind, the period within which the action may be brought shall be reckoned from the date when such person became of full age or of sound mind. R.S.O. 1970, c. 246, s. 47.

Non-
resident
defendants

48. If a person against whom a cause of action mentioned in section 45 or 46 accrues is at such time out of Ontario, the person entitled to the cause of action may bring the action within such times as are before limited after the return of the absent person to Ontario. R.S.O. 1970, c. 246, s. 48.

Where some
joint debtors
have been
within and
some
without
Ontario

49.—(1) Where a person has any such cause of action against joint debtors or joint contractors, he is not entitled to any time within which to commence such action against any one of them who was in Ontario at the time the cause of action accrued, by reason only that some other of them was, at the time the cause of action accrued, out of Ontario.

Effect of
recovery
against one
joint debtor

(2) The person having such cause of action shall not be barred from commencing an action against a joint debtor or joint contractor who was out of Ontario at the time the cause of action accrued, after his return to Ontario, by reason only that judgment has been already recovered against a joint debtor or joint contractor who was at such time in Ontario. R.S.O. 1970, c. 246, s. 49.

Effect of
written
acknowledgment
or part
payment

50.—(1) Where an acknowledgment in writing, signed by the principal party or his agent, is made by a person liable upon an indenture, specialty, judgment or recognizance, or where an acknowledgment is made by such person by part payment, or part satisfaction, on account of any principal or interest due on the indenture, specialty, judgment or recognizance, the person entitled may bring an action for the money remaining unpaid and so acknowledged to be due, within twenty years, or, in the cases mentioned in clause 45 (1) (k), within ten years after the acknowledgment in writing, or part payment, or part satisfaction, or where the person entitled is, at the time of the acknowledgment, under disability as aforesaid, or the person making the acknowledgment is, at the time of making it, out of Ontario, then within twenty years, or in the cases aforesaid within ten years, after the disability has ceased, or the person has returned, as the case may be.

Application
of section

(2) In the case of an action upon a covenant contained in an indenture of mortgage made on or after the 1st day of July, 1939, or upon a covenant contained in an instrument made on or after the 1st day of July, 1939, to pay the whole

or part of any moneys secured by a mortgage, this section does not apply to part payments on the mortgage made by a person other than the person liable on the covenant or to acknowledgments in writing signed by any person other than the person liable on the covenant. R.S.O. 1970, c. 246, s. 50.

51.—(1) No acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take out of the operation of this Part, any case falling within its provisions respecting actions, Promise by words only

- (a) of account and upon the case;
- (b) on simple contract or of debt grounded upon any lending or contract without specialty; and
- (c) of debt for arrears of rent,

or to deprive any party of the benefit thereof, unless the acknowledgment or promise is made or contained by or in some writing signed by the party chargeable thereby, or by his agent duly authorized to make the acknowledgment or promise.

(2) Nothing in this section alters, takes away or lessens the effect of any payment of any principal or interest by any person. R.S.O. 1970, c. 246, s. 51. Effect of payment of principal or interest

52. Where there are two or more joint debtors or joint contractors, or joint obligors, or covenantors, or executors or administrators of any debtor or contractor, no such joint debtor, joint contractor, joint obligor, or covenantor, or executor or administrator loses the benefit of this Act so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed or by reason of any payment of any principal or interest made by any other or others of them. R.S.O. 1970, c. 246, s. 52. Two or more joint contractors, obligors, covenantors, or executors

53. In actions commenced against two or more such joint debtors, joint contractors, executors or administrators, if it appears at the trial or otherwise that the plaintiff, though barred by this Act, as to one or more of such joint debtors, joint contractors, or executors or administrators is nevertheless entitled to recover against any other or others of the defendants by virtue of a new acknowledgment, promise or payment, judgment shall be given for the plaintiff as to the defendant or defendants against whom he recovers, and for the other defendant or defendants against the plaintiff. R.S.O. 1970, c. 246, s. 53. Judgment where plaintiff is barred as to one or more defendants, but not as to all

Effect of
endorsement,
etc., made by
the payee

54. No endorsement or memorandum of any payment written or made upon a promissory note, bill of exchange or other writing, by or on behalf of the person to whom the payment has been made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of this Act. R.S.O. 1970, c. 246, s. 54.

Case of
set-off

55. This Part applies to the case of any claim of the nature hereinbefore mentioned, alleged by way of set-off on the part of any defendant. R.S.O. 1970, c. 246, s. 55.

CHAPTER 241

Limited Partnerships Act

1. In this Act,Interpre-
tation

- (a) “business” includes every trade, occupation and profession;
- (b) “extra-provincial limited partnership” means a limited partnership organized under the laws of a jurisdiction other than Ontario;
- (c) “person” includes an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and a natural person in his capacity as trustee, executor, administrator or other legal representative;
- (d) “prescribed” means prescribed in the regulations; and
- (e) “Registrar” means the Registrar of Partnerships. 1980, c. 48, s. 1.

2.—(1) A limited partnership may, subject to this Act, be formed to carry on any business that a partnership without limited partners may carry on.

Limited
partnership

(2) A limited partnership shall consist of one or more persons who are general partners and one or more persons who are limited partners. 1980, c. 48, s. 2.

Whom to
consist

3.—(1) A limited partnership is formed when a declaration is filed with the Registrar in accordance with this Act.

Formation

(2) A declaration shall be signed by all of the partners desiring to form a limited partnership and shall state,

Declaration

- (a) the firm name under which the limited partnership is to be conducted;
- (b) the general nature of the business;
- (c) the names of the partners, general and limited partners being respectively designated and for each partner,

- (i) the surname of the partner,
 - (ii) the first or other given name by which the partner is commonly known,
 - (iii) the first letters of the other given names, if any, of the partner, and
 - (iv) the residence address or address for service of the partner, including the street name and number, if any;
- (d) the value of money and other property contributed or to be contributed by each limited partner;
- (e) the principal place of business in Ontario of the limited partnership and the address, giving street name and number, if any, where the principal place of business is located;
- (f) such other information as is required by the regulations made under this Act.

Expiry of
declaration

(3) Every declaration filed under subsection (1), including a declaration filed by an extra-provincial limited partnership, expires five years after its date of filing unless the declaration is cancelled by filing a declaration of dissolution or the declaration is replaced by filing a new declaration before the expiry date.

Subsequent
filing of
new
declaration

(4) A limited partnership is not dissolved if a declaration expires, but an additional fee in a prescribed amount is payable for the subsequent filing of a new declaration.

*Partnerships
Registration
Act*
R.S.O. 1980,
c. 371

Filing and
recording

(5) Where a declaration is filed under this Act, a declaration is not required to be filed under the *Partnerships Registration Act*.

(6) The provisions of the *Partnerships Registration Act*, except sections 10 and 17, and the regulations thereunder, applying to the filing and recording of declarations under that Act apply with necessary modifications to declarations under this Act. 1980, c. 48, s. 3.

General and
limited
partners

4.—(1) A person may be a general partner and a limited partner at the same time in the same limited partnership.

Idem

(2) A person who is at the same time a general partner and a limited partner in the same limited partnership has the rights and powers and is subject to the restrictions and liabilities of a general partner except that in respect of his contribution as a limited

partner he has the same rights against the other partners as a limited partner. 1980, c. 48, s. 4.

5.—(1) The surname or a distinctive part of the corporate name of a limited partner shall not appear in the firm name of the limited partnership unless it is also the surname or a distinctive part of the corporate name of one of the general partners. Restriction
in name of
partnership

(2) Where the surname or a distinctive part of the corporate name of a limited partner appears in the firm name contrary to subsection (1), the limited partner is liable as a general partner to any creditor of the limited partnership who has extended credit without actual knowledge that the limited partner is not a general partner. Liability
if limited
partner

(3) Notwithstanding any Act, the word “Limited” may be used in the firm name but only in the expression “Limited Partnership”. 1980, c. 48, s. 5. Use of term
limited

6.—(1) A limited partner may contribute money and other property to the limited partnership, but not services. Contribution
of limited
partner

(2) A limited partner’s interest in the limited partnership is personal property. 1980, c. 48, s. 6. Personal
property

7. A general partner in a limited partnership has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a partnership without limited partners except that, without the written consent to or ratification of the specific act by all the limited partners, a general partner has no authority to, Rights of
general
partners

- (a) do any act in contravention of the partnership agreement;
- (b) do any act which makes it impossible to carry on the ordinary business of the limited partnership;
- (c) consent to a judgment against the limited partnership;
- (d) possess limited partnership property, or assign any rights in specific partnership property, for other than a partnership purpose;
- (e) admit a person as a general partner;
- (f) admit a person as a limited partner, unless the right to do so is given in the partnership agreement; or
- (g) continue the business of the limited partnership on the death, retirement or mental incompetence of a general partner or dissolution of a corporate general partner,

unless the right to do so is given in the partnership agreement. 1980, c. 48, s. 7.

Liability of
limited
partner

8. Subject to this Act, a limited partner is not liable for the obligations of the limited partnership except in respect of the value of money and other property he contributes or agrees to contribute to the limited partnership, as stated in the declaration. 1980, c. 48, s. 8.

Rights of
limited
partner

9. A limited partner has the same right as a general partner,

- (a) to inspect and make copies of or take extracts from the limited partnership books at all times;
- (b) to be given, on demand, true and full information concerning all matters affecting the limited partnership, and to be given a complete and formal account of the partnership affairs; and
- (c) to obtain dissolution of the limited partnership by court order. 1980, c. 48, s. 9.

Share of
profits

10.—(1) A limited partner has, subject to this Act, the right,

- (a) to a share of the profits or other compensation by way of income; and
- (b) to have his contribution to the limited partnership returned.

When profit
may not be
paid

(2) No payment of a share of the profits or other compensation by way of income shall be made to a limited partner from the assets of the limited partnership or of a general partner if the payment would reduce the assets of the limited partnership to an amount insufficient to discharge the liabilities of the limited partnership to persons who are not general or limited partners. 1980, c. 48, s. 10.

Business
dealings
by limited
partner with
partnership

11.—(1) A limited partner may loan money to and transact other business with the limited partnership and, unless he is also a general partner, may receive on account of resulting claims against the limited partnership with general creditors a prorated share of the assets, but no limited partner shall, in respect of any such claim,

- (a) receive or hold as collateral security any of the limited partnership property; or
- (b) receive from a general partner or the limited partnership any payment, conveyance or release from liability if at

the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons who are not general or limited partners.

(2) A limited partner may from time to time,

Rights of
limited
partner

(a) examine into the state and progress of the limited partnership business and may advise as to its management;

(b) act as a contractor for or an agent or employee of the limited partnership or of a general partner; or

(c) act as a surety for the limited partnership. 1980, c. 48, s. 11.

12.—(1) A limited partner is not liable as a general partner unless, in addition to exercising his rights and powers as a limited partner, he takes part in the control of the business.

Limited
partner in
control of
business

(2) For the purposes of subsection (1), a limited partner shall not be presumed to be taking part in the control of the business by reason only that the limited partner exercises rights and powers in addition to the rights and powers conferred upon the limited partner by this Act. 1980, c. 48, s. 12.

Additional
rights and
powers

13.—(1) Subject to subsection (2), limited partners, in relation to one another, share in the limited partnership assets,

Limited
partners'
rights as
between
themselves

(a) for the return of contributions; and

(b) for profits or other compensation by way of income on account of their contributions,

in proportion to the respective amounts of money and other property actually contributed by the limited partners to the limited partnership.

(2) Where there are several limited partners, the partners may agree that one or more of the limited partners is to have priority over other limited partners,

Priority
agreement

(a) as to the return of contributions;

(b) as to profits or other compensation by way of income; or

(c) as to any other matter,

but the terms of this agreement shall be set out in the partnership agreement.

Idem

(3) Where the partnership agreement does not contain an agreement referred to in subsection (2), the shares of the limited partners in the partnership assets shall be determined in accordance with subsection (1). 1980, c. 48, s. 13.

Return of
limited
partner's
contribution

14.—(1) A limited partner has the right to demand and receive the return of his contribution,

- (a) upon the dissolution of the limited partnership;
- (b) when the time specified in the partnership agreement for the return of the contribution occurs;
- (c) after he has given six months notice in writing to all other partners, if no time is specified in the partnership agreement for the return of the contribution or for the dissolution of the limited partnership; or
- (d) when all the partners consent to the return of the contribution.

Idem

(2) Notwithstanding subsection (1), a limited partner is not entitled to receive any part of his contribution out of the limited partnership assets or from a general partner until,

- (a) all liabilities of the limited partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains sufficient limited partnership assets to pay them; and
- (b) the partnership agreement is terminated or so amended, if necessary, to set forth the withdrawal or reduction of the contribution.

Idem

(3) A limited partner has, irrespective of the nature of his contribution, only the right to demand and receive money in return therefor, unless,

- (a) the partnership agreement provides otherwise; or
- (b) all the partners consent to some other manner of returning the contribution.

Dissolution

(4) A limited partner is entitled to have the limited partnership dissolved and its affairs wound up where,

- (a) the limited partner is entitled to the return of his contribution but, upon demand, the contribution is not returned to him; or

- (b) the other liabilities of the limited partnership have not been paid or the limited partnership assets are insufficient for their payment as required by clause (2) (a) and the limited partner seeking dissolution would otherwise be entitled to the return of his contribution. 1980, c. 48, s. 14.

15.—(1) A limited partner is liable to the limited partnership for the difference, if any, between the value of money or other property actually contributed by him to the limited partnership and the value of money or other property stated in the declaration as being contributed or to be contributed by him to the limited partnership.

Limited partner's liability to partnership

(2) A limited partner holds as trustee for the limited partnership,

Limited partner as trustee

- (a) specific property stated in the partnership agreement as contributed by him, but which has not in fact been contributed or which has been returned contrary to this Act; and
- (b) money or other property paid or conveyed to him on account of his contribution contrary to this Act.

(3) Where a limited partner has received the return of all or part of his contribution, he is nevertheless liable to the limited partnership or, where the limited partnership is dissolved, to its creditors for any amount, not in excess of the amount returned with interest, necessary to discharge the liabilities of the limited partnership to all creditors who extended credit or whose claims otherwise arose before the return of the contribution. 1980, c. 48, s. 15.

Idem

16. After the formation of the limited partnership, additional limited partners may be admitted by amendment of the declaration in accordance with section 18. 1980, c. 48, s. 16.

Admission of additional limited partners

17.—(1) A limited partner's interest is assignable.

Interest assignable

(2) A substituted limited partner is a person admitted to all the rights and powers of a limited partner who has died or who has assigned his interest in the limited partnership.

Limited partner

(3) An assignee who is not a substituted limited partner has no right,

Rights of assignee

- (a) to inspect the limited partnership books;

- (b) to be given any information about matters affecting the limited partnership or to be given an account of the partnership affairs,

but is entitled only to receive the share of the profits or other compensation by way of income or the return of the contribution to which the assignor would otherwise be entitled.

Manner of becoming a substituted limited partner

- (4) An assignee may become a substituted limited partner,
 - (a) if all the partners, except the assignor, consent in writing thereto; or
 - (b) if the assignor, being so authorized by the partnership agreement, constitutes the assignee a substituted limited partner.

Idem

- (5) An assignee, who is otherwise entitled to become a substituted limited partner, becomes a substituted limited partner when the declaration is amended in accordance with section 18.

Rights, liabilities of substituted limited partner

- (6) A substituted limited partner has all the rights and powers and is subject to all the restrictions and liabilities of his assignor, except any liability of which he did not have notice at the time he became a limited partner and which could not be ascertained from the partnership agreement or the declaration.

Liability of assignor

- (7) The substitution of an assignee as a limited partner does not release the assignor from liability under section 15 or 27. 1980, c. 48, s. 17.

Change of firm name

- 18.**—(1) Where the firm name of a limited partnership is to be changed, a new declaration shall be filed with the Registrar under subsection 3 (2).

Declaration of change

- (2) A declaration of change shall be filed with the Registrar for every change in information, other than a change in the firm name, required to be stated in the declaration under subsection 3 (2).

Signing of declaration

- (3) A declaration of change shall be signed by at least one of the general partners.

Idem

- (4) A declaration of change for information required by clauses 3 (2) (c) and (d) shall also be signed by the limited partner or substituted limited partner who is the subject of the change.

Change not effective

- (5) For the purposes of this Act, a change referred to in subsection (2) does not take effect until a declaration of change is filed with the Registrar.

(6) A declaration of change expires upon the expiry, replacement or cancellation of the declaration amended by the declaration of change. 1980, c. 48, s. 18.

19.—(1) No limited partnership in respect of which a new declaration or a declaration of change has not been filed as required by section 18 and no member thereof is capable of maintaining any action or other proceeding in any court in Ontario in respect of any contract or tort made or arising in connection with the business carried on by the limited partnership.

(2) Where a new declaration or declaration of change is filed after an action or proceeding is commenced by the limited partnership or member thereof, the action or proceeding may be continued as if the declaration had been filed in accordance with this Act prior to the institution of the action or proceeding. 1980, c. 48, s. 19.

20. The retirement, death or mental incompetence of a general partner or dissolution of a corporate general partner dissolves a limited partnership unless the business is continued by the remaining general partners,

(a) pursuant to a right to do so contained in the partnership agreement; and

(b) with the consent of all the remaining partners. 1980, c. 48, s. 20.

21.—(1) The executor or administrator of the estate of a limited partner has,

(a) all the rights and powers of a limited partner for the purpose of settling the estate of the limited partner; and

(b) whatever power the limited partner had under the partnership agreement to constitute his assignee a substituted limited partner.

(2) The estate of a limited partner is liable for all the liabilities of the limited partner as a limited partner. 1980, c. 48, s. 21.

22.—(1) A declaration of dissolution shall be filed with the Registrar when,

(a) the limited partnership is dissolved; or

(b) all of the limited partners cease to be limited partners.

Idem

(2) The declaration of dissolution shall be signed by at least one of the general partners.

Declaration
cancelled

(3) When the declaration of dissolution is filed, the declaration filed under subsection 3 (2) is cancelled. 1980, c. 48, s. 22.

Settling
accounts
on
dissolution

23. In settling accounts after the dissolution of a limited partnership, the liabilities of the limited partnership to creditors, except to limited partners on account of their contributions and to general partners, shall be paid first, and then, unless the partnership agreement or a subsequent agreement provides otherwise, shall be paid in the following order:

1. to limited partners in respect of their share of the profits and other compensation by way of income on account of their contributions;
2. to limited partners in respect of their contributions;
3. to general partners other than for capital and profits;
4. to general partners in respect of profits;
5. to general partners in respect of capital. 1980, c. 48, s. 23.

Declaration

24.—(1) No extra-provincial limited partnership shall carry on business in Ontario unless it has filed a declaration with the Registrar that sets forth the information required by subsection 3 (2) and states the jurisdiction in which the extra-provincial limited partnership is organized.

Carry on
business

(2) For the purposes of this section, an extra-provincial limited partnership carries on business in Ontario if,

- (a) it solicits business in Ontario;
- (b) its name is listed in a telephone directory for any part of Ontario;
- (c) its name is included in any advertisement in which an address in Ontario is given for the limited partnership;
- (d) it has a resident agent or representative or a warehouse, office or place of business in Ontario;
- (e) it owns real property situate in Ontario;

(f) it effects a distribution of securities in Ontario by way of a prospectus or offering memorandum in compliance with the *Securities Act* and the regulations made thereunder; or

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c. 466

(g) it otherwise carries on business in Ontario.

(3) The declaration filed under subsection (1) shall be signed by all of the partners.

Signing
of
declaration

(4) When a declaration is filed under subsection (1), the extra-provincial limited partnership shall file with the Registrar a power of attorney in the prescribed form appointing a person resident in Ontario or a corporation having its head or registered office in Ontario to be the attorney and representative in Ontario of the extra-provincial limited partnership.

Power of
attorney

(5) Where there is a change in the firm name of an extra-provincial limited partnership, a new declaration and power of attorney shall be filed with the Registrar under this section.

Change of
firm name

(6) Where there is a change in the name or address of the attorney and representative in Ontario of an extra-provincial limited partnership, a new power of attorney shall be filed under this section.

Change in
name and
address of
attorney

(7) An extra-provincial limited partnership shall file a declaration of change with the Registrar for every change in the information, other than a change in the firm name, contained in the declaration filed under subsection (1) and the declaration shall be signed in the manner described in section 18.

Declaration
of change

(8) An extra-provincial limited partnership may cancel the declaration and the power of attorney by filing with the Registrar a declaration of withdrawal signed by at least one of the general partners. 1980, c. 48, s. 24.

Declaration
of
withdrawal

25.—(1) A limited partner of an extra-provincial limited partnership is not liable in Ontario as a general partner of the extra-provincial limited partnership by reason only that it carries on business in Ontario without filing the declaration and power of attorney required by this Act.

Liability of
limited
partner

(2) The laws of the jurisdiction under which an extra-provincial limited partnership is organized govern its organization and internal affairs and the limited liability of its limited partners. 1980, c. 48, s. 25.

Laws
applicable
to extra-
provincial
limited
partnerships

26.—(1) No extra-provincial limited partnership in respect of which a declaration or power of attorney has not been filed as required by this Act and no member thereof is capable of main-

Failure
to file
declaration,
power of
attorney

taining any action or other proceeding in any court in Ontario in respect of any contract or tort made or arising in connection with the business carried on by the extra-provincial limited partnership.

Continuation
of action

(2) When a declaration and power of attorney are filed in accordance with this Act, an action or proceeding referred to in subsection (1) may be continued as if the declaration and power of attorney had been filed in accordance with this Act prior to the institution of the action or proceeding. 1980, c. 48, s. 26.

Effect of
false
statement
in
declaration

27. Where a declaration contains a false or misleading statement, any person suffering loss as a result of relying upon the statement may hold liable,

- (a) every partner who knew when he signed the declaration that the statement was false or misleading;
- (b) every general partner who became aware after he signed the declaration that the statement was false or misleading and failed within a reasonable time to file a declaration of change; and
- (c) every limited partner who became aware after he signed the declaration that the statement was false or misleading and failed within a reasonable time to take steps to cause a declaration of change to be filed. 1980, c. 48, s. 27.

Liability of
person
mistakenly
believing
he is a
limited
partner

28. A person who contributes to the capital of a business carried on by a person or partnership erroneously believing that he has become a limited partner in a limited partnership,

- (a) is not, by reason only of his exercising the rights of a limited partner, a general partner with the person or in the partnership carrying on the business; and
- (b) is not bound by the obligations of the person or partnership carrying on the business,

if, upon ascertaining the fact that he is not a limited partner, he promptly,

- (c) renounces his interest in the profits or other compensation by way of income from the business; or
- (d) takes steps to cause a declaration to be filed with the Registrar showing the person to be a limited partner. 1980, c. 48, s. 28.

29.—(1) A general or limited partner may give written authority to any other person to sign on his behalf any document referred to in this Act. Authority to sign

(2) A person who signs a document to be filed with the Registrar under an authority referred to in subsection (1) shall indicate in the document that he signs on behalf of a general or limited partner. Idem
1980, c. 48, s. 29.

30.—(1) Every partnership shall keep at its principal place of business in Ontario, Access to documents

- (a) a copy of the partnership agreement;
- (b) a copy of the declaration and a copy of each declaration of change amending the declaration;
- (c) a copy of any court order made under section 31;
- (d) a copy of any written authority given under subsection 29 (1); and
- (e) in the case of an extra-provincial limited partnership, a copy of the power of attorney filed with the Registrar.

(2) Where an extra-provincial limited partnership does not have a principal place of business in Ontario, the documents referred to in subsection (1) shall be kept by the attorney and representative in Ontario of the extra-provincial limited partnership at the address stated in the power of attorney filed under subsection 24 (4). Where no principal place of business

(3) Any partner may inspect any of the documents referred to in subsection (1) during the normal business hours of the partnership or the partnership's attorney and representative. Right to inspect

(4) Any person who has a business relationship with the partnership may inspect any of the documents referred to in clauses (1) (b), (c), (d) and (e) during the normal business hours of the partnership or the partnership's attorney and representative. 1980, c. 48, s. 30. Idem

31.—(1) In this section, "Court" means the Supreme Court of Ontario. Interpretation

(2) Where a person who is required by this Act to sign or permit inspection of a document refuses to do so, a person who is aggrieved by the refusal may apply to the Court for an order directing the person to comply with the provisions of this Act and upon such application, the Court may make such order or any Order for compliance

other order that the Court considers appropriate in the circumstances.

Application

(3) An application may be made under subsection (2) notwithstanding the imposition of a penalty in respect of the refusal and in addition to any other rights the applicant may have at law. 1980, c. 48, s. 31.

Offences

32.—(1) Every person who,

- (a) contravenes any provision of this Act or the regulations; or
- (b) makes a statement in any document, material, evidence or information submitted or required by or for the purposes of this Act that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact or that omits to state any material fact, the omission of which makes the statement false or misleading,

is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or, if such person is a corporation, to a fine of not more than \$20,000.

False statements wilful

(2) No person is guilty of an offence referred to in clause (1) (b) if he did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading.

Liability of directors and officers

(3) Where a corporation is guilty of an offence under subsection (1), every director or officer of such corporation, and where the corporation is an extra-provincial corporation, every person acting as its representative in Ontario, who authorized, permitted or acquiesced in such an offence is also guilty of an offence and on conviction is liable to a fine of not more than \$2,000. 1980, c. 48, s. 32.

Regulations

33. The Lieutenant Governor in Council may make regulations,

- (a) prescribing fees for the purposes of this Act;
- (b) respecting additional information to be included in a declaration filed under this Act;
- (c) prescribing forms and providing for their use. 1980, c. 48, s. 33.

34.—(1) A limited partnership in existence on the 30th day of ^{Transition} December, 1980 is continued under this Act and a certificate filed by such a limited partnership under *The Limited Partnerships Act*, being chapter 247 of the Revised Statutes of Ontario, 1970, shall be deemed to be a declaration filed under subsection 3 (2) of this Act, but such declaration expires on the date shown on the certificate.

(2) Notwithstanding section 24, an extra-provincial limited ^{Idem} partnership may carry on business in Ontario without filing a declaration and power of attorney for sixty days after the 31st day of December, 1980. 1980, c. 48, s. 34.

CHAPTER 242

Line Fences Act

1.—(1) In this Act,

Interpre-
tation

- (a) “Minister” means the Minister of Intergovernmental Affairs;
- (b) “occupant” means the occupant of adjoining land that is subject or proposed to be made subject to proceedings instituted under section 4;
- (c) “prescribed” means prescribed by the regulations;
- (d) “regulations” means regulations made under this Act;
- (e) “value of the work” and “costs of the work” have the same meaning and include the value of the materials used and the value of the labour performed to complete the work.

(2) Where, within the meaning of section 4, there is a ^{Idem} dispute between owners or occupants of lands situate in different local municipalities,

- (a) “fence-viewers” means two fence-viewers of the local municipality in which is situate the land of the owner or occupant notified under section 4, and one fence-viewer of the local municipality in which is situate the land of the person instituting the proceedings under that section;
- (b) “in which the land is situate” or “in which the land lies” means in which is situate the land of the owner or occupant so notified under section 4.

(3) Where, within the meaning of section 4, there is a ^{Idem} dispute between the owner or occupant of land situate in a local municipality and the owner or occupant of land situate in territory without municipal organization,

- (a) “fence-viewers” means three fence-viewers appointed by the local municipality in which the land of the one owner or occupant is situate, and at least one of the fence-viewers shall be resident outside the

municipality in the vicinity of the land of the other owner or occupant;

- (b) "local municipality in which the land is situate" means the local municipality in which is situate the land of the one owner or occupant. 1979, c. 31, s. 1.

Appointment
of fence-
viewers

2. The council of every local municipality shall, by by-law, appoint such number of fence-viewers as are required to carry out the provisions of this Act and the by-law shall fix the *per diem* remuneration to be paid to the fence-viewers. 1979, c. 31, s. 2.

Owner of land
may construct
boundary
fence

3. An owner of land may construct and maintain a fence to mark the boundary between his land and adjoining lands. 1979, c. 31, s. 3.

Owner may
request fence-
viewers to
view and
arbitrate

4.—(1) Where the owner of any land desires to have a fence constructed to mark the boundary between his land and the land of an adjoining owner, or where such a fence exists, to have it repaired or reconstructed and where he has not entered into a written agreement with the adjoining owner for sharing the costs of the construction, reconstruction, or repair, as the case may be, of such fence, he may notify the clerk of the local municipality in which the land is situate that he desires fence-viewers to view and arbitrate as to what portion of the fence each owner shall construct, reconstruct or repair and maintain and keep up.

Notice by
clerk

(2) Where the clerk of a municipality is notified under subsection (1), he, or such other person as may be designated by the council for the purpose of giving notices under this section, shall notify in the prescribed form the owner mentioned in subsection (1) and the adjoining owner or the occupant of the land of the adjoining owner that he will on a day named, not less than one week from the service of the notice, cause three fence-viewers of the locality to arbitrate in the premises and he shall notify in the prescribed form the fence-viewers not less than one week before their services are required that they are required to meet to arbitrate in the premises.

Idem

(3) A notice under subsection (2) shall be signed by the clerk or such other designated person, as the case may be, and shall specify the time, being not more than thirty days from the date of the receipt of the notice under subsection (1), and place of the meeting for the arbitration, and the notice shall be given to a person mentioned in subsection (2) by sending it to him by registered mail at the address where he resides or, in the case of a notice to an owner or occupant,

may instead be given by leaving it with him at his place of residence or with some other person, over the age of eighteen years, residing thereat. 1979, c. 31, s. 4.

5. Where an occupant who is not the owner of the land is given a notice under this Act, he shall immediately inform the owner of the notice, and, if he neglects to do so, he is liable for all damage caused to the owner by such neglect. 1979, c. 31, s. 5.

Duty and liability of occupants as to notifying owners

6. The fence-viewers shall examine the premises and, if required by either adjoining owner, shall hear evidence and may examine the owners and their witnesses on oath. 1979, c. 31, s. 6.

Duties and powers of fence-viewers

7.—(1) The fence-viewers shall make an award in the prescribed form, signed by any two of them, respecting the matters in dispute and the award shall state that a fence shall be constructed and maintained and kept up to mark the boundary between the adjoining lands, or, where such a fence exists, that the fence shall be reconstructed or repaired, and shall be maintained and kept up, and the award shall specify,

Award of fence-viewers

(a) the location of the fence;

(b) that,

(i) each adjoining owner shall construct, reconstruct or repair, as the case may be, and maintain and keep up a designated one-half of the fence, or

(ii) the adjoining owner designated shall construct, reconstruct or repair, as the case may be, and maintain and keep up the fence, and that the other adjoining owner shall, upon being notified by the designated adjoining owner of the costs of the work incurred from time to time, pay to the designated adjoining owner one-half of the costs incurred,

unless the fence-viewers, in the circumstances of the case, consider an award in the terms of sub-clause (i) or (ii) to be unjust, in which case the fence-viewers may make such award in respect of the construction, reconstruction, repair or maintenance of the fence as they consider appropriate;

(c) the description of the fence, including the materials to be used in the construction, reconstruction, repair or maintenance and keeping up of the fence;

- (d) the date by which the construction, reconstruction or repairs shall be commenced and the date by which such work shall be completed; and
- (e) the costs of the proceedings and by which of the owners or in what proportion the costs of the proceedings are to be paid.

Character
of fence

(2) In making the award, the fence-viewers shall have regard to the suitability of the fence to the needs of each of the adjoining owners or the occupants of their land, as the case may be, the nature of the terrain on which the fence is, or is to be, located, and the nature of the fences in use in the locality and may have regard to any other factors that they consider relevant.

Where
by-law
under
R.S.O. 1980,
c. 302
in force

(3) Where there is a by-law in force in the municipality under the *Municipal Act* prescribing the height and description of lawful fences or otherwise regulating the construction of fences, the description of the fence specified in the award shall conform to the by-law.

Location
of fence

(4) Where, from the formation of the ground by reason of streams or other causes, it is, in the opinion of the fence-viewers, impracticable to locate the fence upon the line between the lands of the adjoining owners, they may locate it either wholly or partly on the land of either of the adjoining owners where it seems to be most convenient, but such location shall not in any way affect the title to the land.

Employment
of surveyor

(5) Where the fence-viewers locate a fence wholly or partly on the land of either of the adjoining owners under subsection (4), the fence-viewers may employ an Ontario land surveyor to have the location of the fence described by metes and bounds.

Fees of
land
surveyor

(6) Subsections 17 (2), (3) and (4) respecting the payment of fees to fence-viewers and for the collection of amounts paid on account thereof by the municipality apply with necessary modifications to fees payable to a land surveyor employed under subsection (5). 1979, c. 31, s. 7.

Deposit of
award, etc.

8.—(1) The award shall be deposited in the office of the clerk of the local municipality in which the land is situate, and may be proved by a copy certified by the clerk, and a copy of the award certified by the clerk shall forthwith be sent by him by registered mail to the owners and occupants of the adjoining lands to their last known place of residence.

(2) Where the lands of the adjoining owners are situate in different local municipalities, a clerk under subsection (1) shall, forthwith upon the deposit of an award in his office, forward a copy of it certified by him to the clerk of the other municipality in which part of the lands are situate. 1979, c. 31, s. 8.

Where land situate in different municipalities

9.—(1) An owner dissatisfied with the award may appeal therefrom to a judge of the small claims court for the territorial division in which the land is situate by serving on the owner or occupant of the adjoining land and the fence-viewers, within fifteen days of receiving a copy of the award made under section 7, a notice of appeal in the prescribed form and by filing a copy of each notice together with an affidavit of service of the notice in the prescribed form with the clerk of the court within that period.

Appeal

(2) A notice under subsection (1) shall be served by the owner in the same manner as a notice to an owner or occupant is served by the clerk under section 4.

Service of notice

(3) Upon the filing of the copies of the notices and the affidavits mentioned in subsection (1), the clerk of the court shall forthwith fix the time and place for the hearing of the appeal, and notice of the time and place of the appeal shall be served on each person served with a notice under subsection (1) and on the owner giving notice under that subsection and a notice under this subsection shall be served in the same manner as a notice of trial is served on a party to a suit under the *Small Claims Courts Act*.

Notice of hearing

R.S.O. 1980, c. 476

(4) The judge shall hear and determine the appeal and may set aside, alter or affirm the award, or correct any error therein, and may examine the parties and their witnesses on oath, and may inspect the premises and may order payment of costs by either party and fix the amount of the costs.

Powers of judge

(5) The decision of the judge is final and the award, as altered or affirmed, shall be dealt with in all respects as it would have been if it had not been appealed from.

Decision of judge to be final

(6) The practice and procedure on the appeal, including the fees payable for subpoenas and the conduct money of witnesses, shall be the same, as nearly as may be, as in the case of a suit in the small claims court, but the judge may at any time give special direction as to the conduct of the hearing so that he may properly and fully inform himself of all relevant facts and may at any time order such sum of

Procedure

money to be paid by the appellant to the clerk as will be a sufficient indemnity against the costs of the appeal.

Where
land in
different
court
divisions

(7) Notwithstanding subsections (1) and (3), where the award affects land in two or more territorial divisions, the appeal may be to the judge of the small claims court for the territorial division in which any part of the land is situate and in such case the documents mentioned in subsection (1) shall be filed with the clerk of the court in which the appeal is to be heard. 1979, c. 31, s. 9.

Judge's
expenses

10.—(1) If the judge of the small claims court inspects the premises or hears the appeal at a place other than the place where proceedings in that court are usually conducted, he is entitled to be paid the actual expenses incurred by him and, in the order setting aside, altering or affirming the award, shall fix the amount of such expenses and name the person by whom the amount is to be paid.

Municipality
to pay
expenses
and collect
amount

(2) The judge shall be paid by the corporation of the municipality the amount so fixed, and it shall be collected in the same manner as is provided in respect of the fence-viewer's fees. 1979, c. 31, s. 10.

Owner may
require
award to be
obeyed

11.—(1) Where the award specifies that a portion or all of the fence shall be repaired, constructed, reconstructed, maintained or kept up by one adjoining owner and that adjoining owner fails to obey the award, the other adjoining owner may, by notice, served by him on the first adjoining owner or the occupant of his land, require the first adjoining owner to obey the award.

Service
of notice

(2) A notice served by an adjoining owner under subsection (1) shall be served in the same manner as a notice to an owner or occupant is served by the clerk under section 4.

Completion
of work
by owner

(3) If the notice is not obeyed within two weeks after it has been served, the owner desiring to enforce the award may do or complete the work that the award directs and may immediately institute proceedings to recover the value of the work done or completed and the costs of the proceedings from the owner of the adjoining land.

Entry on
property of
adjoining
owner

(4) An owner, or any person acting on his behalf, in doing or completing work pursuant to an award under section 7 or under subsection (3) or under subsection 13 (7), may enter on the property of the adjoining owner to the extent that it is necessary to do or complete the work, but in making such entry or doing or completing such work shall do no unnecessary spoil or waste.

(5) No person shall obstruct or threaten to obstruct a person entering onto property or doing or completing work in accordance with subsection (4) and every person who contravenes this subsection is guilty of an offence and on conviction is liable to a fine of not more than \$1,000.

(6) Where the award specifies that one adjoining owner shall pay to the designated adjoining owner a portion of the costs of the work under subclause 7 (1) (b) (ii), the designated adjoining owner may notify the other adjoining owner or the occupant of his land of the amount owing in accordance with the award in the same manner as an owner may give notice under subsection (2), and, where such amount is not paid within twenty-eight days following the day on which the notice is given, the designated adjoining owner may institute proceedings to recover the amount and the costs of the proceedings from the other adjoining owner.

(7) An owner desiring to institute proceedings under subsection (3) or (6) shall notify the clerk of the local municipality in which the land is situate that he desires the three fence-viewers who made the award to reattend at the premises and certify,

- (a) the default of the adjoining owner; and
- (b) the value of the work done by the owner which according to the award ought to have been done by the adjoining owner or the portion of the costs of the work done which ought to have been paid by the adjoining owner, as the case may be.

(8) Where the clerk of a municipality is notified by an owner under subsection (7), he, or such other person as may be designated by the council for the purpose of giving notices under this section, shall forthwith notify in the prescribed form that owner and the owner or occupant of the adjoining land that he will, on a day named, not less than one week from the service of the notice, cause the fence-viewers to reattend at the premises and he shall also notify in the prescribed form the fence-viewers not less than one week before their services are required.

(9) The notices in each case shall be signed by the clerk or such other designated person, as the case may be, and shall specify the time and place of the reconvening of the fence-viewers, and the notices shall be served in the same manner as a notice served under subsection 4 (3).

Notice to
another
fence-viewer
to attend

(10) Where an owner notifies the clerk under subsection (7), and for any reason any of the three fence-viewers who made the award is unable to reattend at the premises, the clerk shall notify another fence-viewer of the municipality to attend in his place. 1979, c. 31, s. 11.

Duties of
fence-viewers

12.—(1) The fence-viewers, upon receiving a notice served under subsection 11 (8), or upon being notified under subsection (10) of that section, shall attend in accordance with such notice, and if satisfied that the adjoining owner or the occupant of his land was duly notified under subsection 11 (1) or (6), as the case may be, and has failed to obey the award, the fence-viewers shall,

(a) where the adjoining owner or the occupant of his land was notified under subsection 11 (1), determine the value of the work done by the owner desiring to enforce the award which is attributable to the adjoining owner and shall prepare a certificate in the prescribed form certifying the default of the adjoining owner and certifying the value of the said work; or

(b) where the adjoining owner or the occupant of his land was notified under subsection 11 (6), determine the value of the work done by the owner desiring to enforce the award and the portion of that value payable by the adjoining owner and shall prepare a certificate in the prescribed form certifying the default of the adjoining owner and the amount payable by him as his share of the costs of the work.

Costs

(2) The fence-viewers shall specify in a certificate under subsection (1) the costs of the proceedings described in that subsection and shall specify either that the adjoining owner or that the other owner pay the costs, or that each of them pay a specified portion of the costs.

Idem

(3) The fence-viewers shall, in the certificate, certify the amount payable by the adjoining owner as his share of the costs of the proceedings described in subsection (1) and of the proceedings under section 4, less the portion of that amount payable as fees to the fence-viewers or fees to a land surveyor employed under subsection 7 (5), and the total amount certified under this subsection and subsection (1) shall become payable to the owner desiring to enforce the award.

Deposit of
certificate

(4) Upon preparing a certificate under subsection (1), the fence-viewers shall forthwith deposit the certificate with the clerk of the

local municipality within which the land is situate and the provisions of subsections 8 (1) and (2) respecting an award apply with necessary modifications to the certificate.

(5) The clerk of the local municipality in which the land of the adjoining owner is situate shall, upon receiving a certificate prepared under subsection (1) and the award in respect of which the certificate was made, or copies thereof certified by the clerk in accordance with this Act, and upon application in writing by the owner entitled to receive the amount certified, have the total amount certified placed upon the collector's roll and the amount may be collected in the same manner as taxes, together with interest thereon accruing from the date the application was made at the same rate as interest added by the municipality under section 412 of the *Municipal Act* to taxes due and unpaid, and is until so collected or otherwise paid a charge upon the land liable for payment thereof and when collected shall forthwith be paid over to the owner entitled thereto.

Collection
of amount
as taxes

R.S.O. 1980,
c. 302

(6) Notwithstanding subsection (5), the council of a local municipality may, by by-law, provide that where a certificate and an award mentioned in that subsection and made in respect of land situate within the municipality, or copies thereof certified by a clerk in accordance with this Act, are deposited with the clerk of the municipality, the treasurer of the municipality may, upon written application therefor, pay to the owner entitled to receive the amount certified, the amount so certified or a portion thereof, where he is satisfied that the owner is entitled thereto, and where an owner has received the amount certified or a portion thereof under this subsection, he is not entitled to make an application or receive an amount under subsection (5).

Payment by
treasurer

(7) An amount paid to an owner under subsection (6) shall be placed upon the collector's roll and may be collected in the same manner as municipal taxes together with interest thereon accruing from the date of payment at the same rate as the interest added by the municipality under section 412 of the *Municipal Act* to taxes due and unpaid, and is until so collected or otherwise paid a charge upon the land liable for payment thereof.

Collection
of amount
as taxes

(8) Upon making a payment to an owner under subsection (6), the treasurer shall forthwith notify in the prescribed form the adjoining owner against whom the award is being enforced that the payment has been made.

Notice by
treasurer

Levy of
amount
against
goods and
chattels

(9) Instead of having the amount certified placed upon the collector's roll, or instead of applying for that amount or a portion thereof under a by-law passed under subsection (6), the owner entitled to receive the amount may file a copy of the certificate and of the award in respect of which the certificate was made, certified by the clerk in accordance with this Act, with the clerk of the small claims court of the division in which any part of the land affected by the award is situate, and upon being so filed, the amount may be levied against the goods and chattels and land of the adjoining owner in the same manner as the amount of a judgment of a small claims court may be levied under the *Small Claims Courts Act*. 1979, c. 31, s. 12.

R.S.O. 1980,
c. 476

When work
may be
dismantled

13.—(1) Notwithstanding subsection 11 (3), an owner desiring to enforce an award shall not dismantle work done by the adjoining owner in respect of the fence mentioned in the award except in accordance with this section.

Notice

(2) Where in the opinion of an owner work done by an adjoining owner pursuant to an award made under section 7 in respect of their lands is not in compliance with the description of the fence or the location of the fence as specified in the award, the owner may, by notice served by him on the adjoining owner or occupant of his land, require the adjoining owner to make the work comply with the award.

Particulars

(3) A notice under subsection (2) shall specify in what particulars the work done fails to comply with the award and shall be served by an owner in the same manner as a notice to an owner or occupant is served by the clerk under section 4.

Fence-viewers
to reattend

(4) If the notice is not obeyed within two weeks after it has been served, the owner may cause the fence-viewers to reattend at the premises to view the work and to determine whether or not the work complies with the award.

Service of
notices

(5) The provisions of section 4 respecting the convening of fence-viewers apply with necessary modifications to the recalling of fence-viewers under subsection (4).

Powers of
fence-viewers

(6) Where the fence-viewers determine under subsection (4) that the work does not comply with the award, they shall in the prescribed form set out their determination with reasons therefor and shall specify the action to be taken by the adjoining owner to make such work comply, the date by which such action shall commence, and the date by which the work shall be completed.

(7) Where the adjoining owner does not comply with the directions given by the fence-viewers under subsection (6), the owner that initiated the proceedings under this section may, by notice to the adjoining owner or the occupant of his land, require the adjoining owner to obey the directions, and the provisions of sections 11 and 12 respecting the enforcement of an award apply with necessary modifications to the enforcement of the directions given by the fence-viewers under subsection (6). Where owner does not comply

(8) Where the fence-viewers make a determination with directions under subsection (6), they shall specify the fees payable in respect of their services under subsections (4) and (6) and that the fees be paid by the adjoining owner or the other owner or that a specified portion of the fees be paid by each of them. Fees

(9) Section 8 applies with necessary modifications to a determination with directions made by the fence-viewers under subsection (6). 1979, c. 31, s. 13. Deposit of determination

14.—(1) Where the fence-viewers have attended at premises pursuant to a notice given under subsection 4 (2), subsection 11 (8) or subsection 13 (5) or (7), and have decided, Where no award, etc., made, fees of fence-viewers

(a) that no award shall be made because they have no jurisdiction to make the award or because the owners of the adjoining lands have requested that no award be made; or

(b) that no certificate or determination with directions shall be made,

they shall prepare their decision in the prescribed form giving reasons therefor, and shall specify in the decision that the fees of the fence-viewers in respect of such attendance be paid either by one adjoining owner or by the other or that a specified portion of the fees be paid by each of them.

(2) Section 8 applies, with necessary modifications, to a decision made under subsection (1). 1979, c. 31, s. 14. Deposit of decision

15.—(1) The award and a certificate made in respect of the award may be registered in the proper land registry office and when registered are charges upon the land affected by them. Award to be a charge on land if registered

(2) Registration may be by the registration of a duplicate of the award or certificate, as the case may be, or of a copy How registered

thereof, verified by an affidavit, together with an affidavit of the execution of the award or certificate. 1979, c. 31, s. 15.

Enforcement
of agreements

16. Any agreement in writing in the prescribed form between owners respecting a line fence may be registered and enforced as if it were an award of fence-viewers. 1979, c. 31, s. 16.

Fees to
surveyors
and witnesses

17.—(1) An Ontario land surveyor and a witness are entitled to the same compensation as if subpoenaed in a small claims court.

Payment of
fence-viewers
fees

(2) The corporation of the local municipality shall, at the expiration of the time for appeal from an award made under section 7 or after appeal, as the case may be, and, where applicable, upon the depositing of a certificate under subsection 12 (4) or subsection 13 (7), or of a determination with directions under subsection 13 (9), or a decision under section 14, pay to the fence-viewers their fees, and shall, unless the fees or a portion thereof are forthwith repaid by the person adjudged to pay the fees or the portion thereof, place the amount unpaid upon the collector's roll, and the amount may be collected in the same manner as municipal taxes together with interest thereon accruing from the date of payment at the same rate as the interest added by the municipality under section 412 of the *Municipal Act*, to taxes due and unpaid and is until so collected or otherwise paid a charge upon the land liable for payment thereof.

R.S.O. 1980,
c. 302

Where land
in adjacent
municipality

(3) Where the land of the person adjudged to pay the fees or a portion thereof is not situate within the local municipality, the clerk of the municipality shall, where the land is situate in an adjacent municipality, notify the clerk of the adjacent municipality of the amount owing by such person in respect of the fees or the portion thereof, and the clerk of the adjacent municipality shall place the amount upon the collector's roll for that municipality, and the amount may be collected in the same manner as municipal taxes together with interest thereon accruing from the date of payment at the same rate as the interest added by the municipality under section 412 of the *Municipal Act*, to taxes due and unpaid, and is until so collected or otherwise paid a charge upon the land liable for payment thereof, and when the amount with interest or any part thereof is collected the clerk shall forthwith remit it to the clerk of the municipality that gave the notice under this subsection.

Where land in
unorganized
territory

(4) Where the land of the person adjudged to pay the fees or a portion thereof is situate in territory without

municipal organization, the amount owing by such person in respect of the fees or the portion thereof may be recovered with interest as a debt due to the municipality from such person. 1979, c. 31, s. 17.

18.—(1) Where there is an unopened road allowance lying between the lands of two owners and not enclosed by a lawful fence, it is the duty of the fence-viewers, when called upon, to divide the road allowance equally between the owners of the lands, and to require each owner to construct, keep up and maintain a just proportion of fence to mark the division line, but nothing in this section in any way affects or interferes with the rights of the municipality in the road allowance or is deemed to confer any title therein upon such owners or either of them.

(2) No person shall initiate proceedings for calling on the fence-viewers to act under subsection (1) without the approval of the council of the municipality in which the road allowance is situate. 1979, c. 31, s. 18.

19.—(1) Where land that was formerly used as part of a line of railway is conveyed in its entire width by the railway company,

(a) to the owner of abutting land, such owner, his heirs, executors and assigns, are responsible for constructing, keeping up and repairing the fence that marks the lateral boundary between the conveyed lands and the lands of the adjoining owner for a period of ten years from the date of the conveyance and thereafter section 4 applies;

(b) to a person who is not the owner of abutting land, such person, his heirs, executors and assigns, are responsible for constructing, keeping up and repairing the fences that mark the lateral boundaries of such land; or

(c) to the Crown in right of Ontario, a Crown agency within the meaning of the *Crown Agency Act* or the corporation of a municipality where the Crown, Crown agency or corporation, as the case may be, is not the owner of abutting land, the Crown, Crown agency or corporation is responsible for constructing, keeping up and repairing the fences that mark the lateral boundaries of such land.

(2) For the purpose of clause (1) (c), “municipality” includes a regional, metropolitan or district municipality and the County of Oxford. 1979, c. 31, s. 19.

Certain
fences
removable
on notice

20.—(1) The owner of the whole or part of a line fence that forms part of the fence marking the boundary between his land and the land of an adjoining owner shall not take down or remove any part of such fence.

(a) without giving at least six months previous notice of his intention to the owner or occupant of the adjacent land unless the owner or occupant, after demand made upon him in writing by the owner of the fence, refuses to pay therefor the sum determined as provided by section 7; or

(b) if such owner or occupant will pay to the owner of the fence or part thereof such sum as the fence-viewers may award to be paid therefor under section 7.

Other
provisions
of Act
to apply

(2) The provisions of this Act for determining disputes between owners of adjoining lands, the manner of enforcing awards and appeals therefrom and the prescribed forms and all other provisions of this Act, so far as applicable, apply to proceedings under this section. 1979, c. 31, s. 20.

Where tree
thrown across
line fence

21.—(1) If any tree is thrown down by accident or otherwise so as to cause damage to a line fence, the owner or occupant of the land on which the tree stood shall forthwith remove the tree and repair the fence.

When
adjoining
land-owner
may remove
tree

(2) On the neglect or refusal of the owner or occupant of the land on which the tree stood so to do for forty-eight hours after notice in writing to remove the tree, the adjoining land-owner may remove it in the most convenient and inexpensive manner, and may make good the fence so damaged, and may retain the tree to remunerate him for such removal.

Recovery
of cost

(3) A person who repairs a fence under subsection (2) may recover the costs of the work in the same manner as an owner under subsection 11 (3) may recover the value of work done by him.

Right of
entry

(4) For the purpose of such removal, the owner of the tree may enter into and upon the adjoining land doing no unnecessary spoil or waste.

Fence-viewers
to decide
disputes

(5) All questions arising under this section shall be adjusted by three fence-viewers of the municipality, the decision of any two of whom is binding upon the parties. 1979, c. 31, s. 21.

22.—(1) This Act applies to lands owned by a municipality and to lands owned by a local board within the meaning of the *Municipal Affairs Act*, including a conservation authority.

Act applies to lands of municipality or local board
R.S.O. 1980, c. 303

(2) For the purposes of this section, “municipality” includes a regional, metropolitan or district municipality and the County of Oxford.

Interpretation

(3) The council of a municipality or a local board may enter into agreements with owners of land adjoining land owned by the municipality or the local board, as the case may be, for the construction, reconstruction, repair, maintenance and keeping up of line fences to mark the boundary of such lands, and any such agreement when reduced to writing in the prescribed form may be registered and enforced as if it were an agreement between owners under section 16. 1979, c. 31, s. 22.

Agreements

23.—(1) Except as otherwise provided in subsections (2) and (3), this Act applies so as to bind the Crown in right of Ontario.

Act binds Crown

(2) This Act does not apply to lands of the Crown in right of Ontario that at no time have been disposed of by the Crown in right of Ontario by letters patent, deed or otherwise.

Exception

(3) Notwithstanding any other provision in this Act, an award made under section 7 in respect of lands vested in the Crown in right of Ontario shall not require the Crown to be responsible for more than one-half of the fence or to pay to the adjoining owner an amount exceeding 50 per cent of the cost of the fence. 1979, c. 31, s. 23.

Limitation

24. Notwithstanding sections 22 and 23, this Act does not apply to any lands that constitute a public highway. 1979, c. 31, s. 24.

Act does not apply to lands that constitute public highway

25. The provisions of this Act respecting the apportionment of the costs of a line fence and the enforcement thereof do not apply in a municipality where a by-law passed under paragraph 20 of section 210 of the *Municipal Act* is in force. 1979, c. 31, s. 25.

Where Act not to apply

R.S.O. 1980, c. 302

26. The Minister may make regulations prescribing forms for the purposes of this Act and providing for their use. 1979, c. 31, s. 26.

Regulations by Minister

27. The Lieutenant Governor in Council may make regulations to provide for determining how the costs of line fences marking the boundary between lands situate in

Regulations by Lieutenant Governor in Council

territory without municipal organization shall be apportioned, and for providing for the manner in which any amount so apportioned shall be recoverable. 1979, c. 31, s. 27.

Inspection
of awards,
decisions, etc.
R.S.O. 1980,
c. 302

28. Subsection 78 (1) of the *Municipal Act* applies, with necessary modifications, to an award, certificate, determination, decision, notice or other document that, as a result of proceedings initiated under this Act is in the possession or under the control of the clerk or a person designated by the council under this Act for the purpose of giving notices. 1979, c. 31, s. 28.

CHAPTER 243

Liquor Control Act

1. In this Act,

Interpre-
tation

- (a) "beer", "liquor", "spirits", "wine" and "Ontario wine" have the same meaning as in the *Liquor Licence Act*; R.S.O. 1980, c. 244
- (b) "Board" means the Liquor Control Board of Ontario continued under section 2;
- (c) "government store" means a store established or authorized under this Act by the Board for the sale of spirits, beer or wine;
- (d) "manufacturer" means a person authorized under an Act of the Parliament of Canada to manufacture or produce any liquor;
- (e) "Minister" means the Minister of Consumer and Commercial Relations or such other member of the Executive Council as the Lieutenant Governor in Council may designate. 1975, c. 27, s. 1.

2.—(1) The Liquor Control Board of Ontario is continued and shall consist of not more than five members appointed by the Lieutenant Governor in Council. Liquor Control Board continued

(2) The members of the Board shall be appointed to hold office for a term not exceeding five years and may be re-appointed for further succeeding terms not exceeding five years each. Terms of office

(3) The Lieutenant Governor in Council shall designate one of the members to be Chairman of the Board and may designate one of the members to be Vice-Chairman of the Board. Chairman and Vice-Chairman

(4) In case of the absence or illness of the Chairman or there being a vacancy in the Office of the Chairman, the Vice-Chairman or, if none, such director as the Board designates for such purpose shall act as and have all the duties and powers of the Chairman. Acting Chairman

Remunera-
tion of
members

(5) The members of the Board shall be paid such remuneration as is fixed by the Lieutenant Governor in Council.

Seat in
Assembly
not vacated
R.S.O. 1980,
c. 235

(6) Notwithstanding anything in the *Legislative Assembly Act*, the appointment of the Chairman or of any other member of the Board, if a member of the Assembly, shall not be avoided by reason of the payment to him or the acceptance by him of any salary or other remuneration under this Act, nor shall he thereby vacate or forfeit his seat or incur any of the penalties imposed by that Act for sitting and voting as a member of the Assembly. 1975, c. 27, s. 2.

Power and
purposes of
Board

3. The purposes of the Board are, and it has power,

- (a) to buy, import and have in its possession for sale, and to sell, liquor and other products containing alcohol and non-alcoholic beverages;
- (b) to control the sale, transportation and delivery of liquor;
- (c) to make provision for the maintenance of warehouses for liquor and to control the keeping in and delivery from any such warehouses;
- (d) to establish government stores for the sale of liquor to the public;
- (e) to authorize manufacturers of beer or Ontario wine to sell their beer or Ontario wine to the public in stores owned and operated by the manufacturers and to authorize Brewers' Warehousing Company Limited to operate stores for the sale of beer to the public;
- (f) to control and supervise the marketing methods and procedures of manufacturers including the operation of government stores by persons authorized under clause (e);
- (g) subject to the *Liquor Licence Act*, to determine the municipalities within which government stores shall be established or authorized and the location of such stores in such municipalities;
- (h) to determine the classes, varieties and brands of liquor to be kept for sale at government stores and maintain standards therefor;
- (i) to fix the prices at which the various classes, varieties and brands of liquor are to be sold and, except

R.S.O. 1980,
c. 244

in the case of liquor sold through an outlet designated by the Minister of National Revenue under the *Excise Act* (Canada) as a duty free sales outlet, such prices shall be the same at all government stores; R.S.C. 1970, c. E-13

(j) to determine the nature, form and capacity of all packages to be used for containing liquor to be kept or sold;

(k) to appoint one or more vendors of sacramental wines in any municipality and to control the keeping for sale, sale and delivery of sacramental wines;

(l) to lease or, subject to the approval of the Lieutenant Governor in Council, to purchase such land and buildings and erect such buildings as are necessary for the purposes of the Board;

(m) to require manufacturers of liquor to furnish such samples of their products to the Board as the Board may require;

(n) to do all things necessary for the management and operation of the Board in the conduct of its business. 1975, c. 27, s. 3.

4.—(1) The Chairman shall preside at all meetings of the Board, or, in his absence, or if the office of Chairman is vacant, the Vice-Chairman has all the powers and shall perform all the duties of the Chairman. Duties of Chairman

(2) The Chairman shall be the chief executive of the Board and shall devote his full time to the work of the Board, and the other members shall devote such time as is necessary for the due performance of their duties as members of the Board. Idem

(3) Subject to the approval of the Lieutenant Governor in Council, the Board may employ such officers, inspectors and employees and retain such assistance as is considered necessary and may determine their salary, remuneration and terms and conditions of employment. Staff

(4) The *Public Service Superannuation Act* applies to the permanent and full-time probationary staff of the Board as though the Board had been designated by the Lieutenant Governor in Council under section 28 of that Act. Employees' superannuation benefits R.S.O. 1980, c. 419

Corporation
R.S.O. 1980,
c. 95

(5) The Board is a corporation to which the *Corporations Act* does not apply. 1975, c. 27, s. 4.

Payment of
costs from
revenues

5.—(1) All expenses incurred and expenditures made by the Board in the conduct of its affairs shall be paid out of the revenues of the Board.

Payments
into
Consolidated
Revenue
Fund

(2) The net profits of the Board shall be paid into the Consolidated Revenue Fund at such times and in such manner as the Lieutenant Governor in Council may direct.

Financial
statements

(3) The accounts of the Board shall be made up to the 31st day of March in each year, and at such other times as is determined by the Lieutenant Governor in Council, and in every case the Board shall prepare a balance sheet and statement of profit and loss.

Reports to
Treasurer

(4) The Board shall submit to the Treasurer of Ontario, at such times as he may prescribe, reports setting out the net profit and net profit forecasts of the Board and such reports shall contain such information as he may prescribe. 1975, c. 27, s. 5.

Audit

6. The accounts and financial transactions of the Board shall be audited annually by the Provincial Auditor. 1975, c. 27, s. 6.

Annual
reports

7.—(1) The Board shall make a report annually to the Minister upon the affairs of the Board, and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Other
reports

(2) The Board shall make such further reports to the Minister and provide him with such information as the Minister may from time to time require. 1975, c. 27, s. 7.

Regulations

8. The Lieutenant Governor in Council may make regulations,

- (a) governing the sale and distribution of liquor by manufacturers;
- (b) governing the manner in which liquor may be kept, stored or transported by manufacturers;
- (c) prescribing standards for liquor sold in Ontario by manufacturers;
- (d) prescribing the days and hours when government stores or any class of them may be open;

- (*e*) requiring manufacturers to furnish the Board with such returns and information respecting the sale of liquor as is prescribed;
- (*f*) prescribing forms for the purposes of this Act and providing for their use;
- (*g*) governing the purchase of liquor under a permit issued by the Liquor Licence Board and requiring the payment of fees on such purchases and prescribing the amounts thereof. 1975, c. 27, s. 8.

CHAPTER 244

Liquor Licence Act

1. In this Act,

Interpre-
tation

- (a) “alcohol” means a product of fermentation or distillation of grains, fruits or other agricultural products rectified once or more than once whatever may be the origin thereof, and includes synthetic ethyl alcohol;
- (b) “beer” means any beverage containing alcohol in a proportion that is greater than that prescribed by the regulations obtained by the fermentation of an infusion or decoction of barley, malt and hops or of any similar products in drinkable water;
- (c) “Board” means the Liquor Licence Board referred to in section 2;
- (d) “government store” means a government store as established under the *Liquor Control Act*;
- (e) “licence” means a licence issued under this Act;
- (f) “liquor” means spirits, wine and beer or any combination thereof and includes any alcohol in a form appropriate for human consumption as a beverage alone or in combination with any other matter;
- (g) “manufacturer” means a person authorized under an Act of the Parliament of Canada to manufacture or produce any liquor;
- (h) “Minister” means the Minister of Consumer and Commercial Relations;
- (i) “municipality” means a city, town, village or township;
- (j) “Ontario wine” means,

R.S.O. 1980,
c. 243

- (i) wine produced from grapes, cherries, apples or other fruits grown in Ontario or the concentrated juice thereof, and includes Ontario wine to which has been added herbs, water, honey, sugar or the distillate of Ontario wine or of cereal grains grown in Ontario, or
- (ii) wine produced by the alcoholic fermentation of Ontario honey with or without the addition of caramel, natural botanical flavours or the distillate of Ontario honey wine;
- (k) "permit" means a permit issued under this Act;
- (l) "regulations" means the regulations made under this Act;
- (m) "sell" means to supply for remuneration, directly or indirectly, in any manner by which the cost is recovered from the person supplied, alone or in combination with others, and "sale" has a corresponding meaning;
- (n) "spirits" means any beverage that contains alcohol obtained by distillation;
- (o) "Tribunal" means the Liquor Licence Appeal Tribunal referred to in section 13;
- (p) "wine" means any beverage containing alcohol in a proportion that is greater than that prescribed by the regulations obtained by the fermentation of the natural sugar contents of fruits, including grapes, apples and other agricultural products containing sugar, and including honey and milk. 1975, c. 40, s. 1; 1975 (2nd Sess.), c. 17, s. 1.

Liquor
Licence
Board
continued

2.—(1) The Liquor Licence Board is continued and shall consist of not more than seven members appointed by the Lieutenant Governor in Council.

Chairman,
vice-
chairmen

(2) The Lieutenant Governor in Council may designate one of the members of the Board as chairman and one or more of the members as vice-chairmen.

Term

(3) The members of the Board shall be appointed to hold office for a term not exceeding five years and may be

reappointed for further successive terms not exceeding five years each.

(4) The members of the Board shall be paid such salaries or other remuneration as may be fixed by the Lieutenant Governor in Council. Remuneration

(5) The chairman shall be the chief executive officer of the Board and shall devote his full time to the work of the Board, and the other members shall devote such time as may be necessary for the due performance of their duties as members of the Board. Duties of chairman

(6) The Board is a corporation to which the *Corporations Act* does not apply. Corporation
R.S.O. 1980,
c. 95

(7) The Board shall perform such duties as are assigned to it by or under this and any other Act and shall administer and enforce this Act and the regulations. Duties

(8) Subject to the approval of the Lieutenant Governor in Council, the Board may appoint such officers, inspectors and employees and retain such assistance as is considered necessary and may determine their salary, remuneration and terms and conditions of employment. Staff

(9) The revenues of the Board shall be paid to the Treasurer of Ontario and the moneys required for the expenditures of the Board shall be paid out of the moneys appropriated therefor by the Legislature. 1975, c. 40, s. 2. Finances

3. For the purposes of and subject to the *Crown Employees Collective Bargaining Act*, and the regulations thereunder, and subject to any further designation under that Act, the persons employed in the work of the Board are designated as a unit of employees that is an appropriate bargaining unit for collective bargaining purposes and the Liquor Control Board of Ontario and Liquor Licence Board of Ontario Employees' Association is designated as the employee organization that has representation rights in relation to such bargaining unit. 1975, c. 40, s. 3 (3). Bargaining unit and agent under
R.S.O. 1980,
c. 108

4.—(1) No person shall keep for sale, offer for sale or sell liquor except under the authority of a licence or permit issued by the Board. Licences and permits for sale of liquor

(2) No person shall canvass for, receive or solicit orders for the sale of liquor unless he is the holder of a licence or Soliciting orders

permit issued by the Board under subsection (1) or unless he is registered under section 38.

Exception for
beer and
wine stores
R.S.O. 1980,
c. 243

(3) Subsections (1) and (2) do not apply to the sale of liquor by or under the authority of the Liquor Control Board of Ontario under the *Liquor Control Act*.

Transfer
of licences

(4) A licence issued under this section may be transferred, subject to the approval of the Board, on the application of the transferee.

Temporary
transfers

(5) The Board may approve the transfer of a licence for a period of not more than six months, to permit the orderly disposition of licensed premises by a trustee in bankruptcy, receiver or liquidator authorized by statute or a court for the purpose or a mortgagee who enters into possession under the mortgage and section 6 does not apply. 1975, c. 40, s. 4.

Manu-
facturer's
licence to sell

5.—(1) The Board may, subject to the approval of the Minister, issue a licence authorizing the manufacturer of spirits, beer or Ontario wine to keep for sale, offer for sale or sell such spirits, beer or Ontario wine to the Liquor Control Board of Ontario under the *Liquor Control Act* and the decision of the Board to issue or to refuse to issue a licence, with the approval of the Minister, is final.

Conditions

(2) A licence under subsection (1) may be issued subject to such terms or conditions as are prescribed in the licence or by the regulations. 1975, c. 40, s. 5.

Licence
to sell
other than
by manu-
facturer

6.—(1) An applicant for a licence, or for approval of the transfer of a licence other than a licence referred to in section 5, is entitled to be issued the licence or have the transfer approved except where;

(a) having regard to his financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of his business;

(b) the applicant is not a Canadian citizen or a person lawfully admitted to Canada for permanent residence and ordinarily resident in Canada;

(c) the applicant is a corporation and,

(i) having regard to its financial position, it cannot reasonably be expected to be finan-

cially responsible in the conduct of its business, or

- (ii) the past conduct of its officers or directors or of a shareholder who owns or controls 10 per cent or more of its issued and outstanding equity shares as determined under section 20 affords reasonable grounds for belief that its business will not be carried on in accordance with law and with integrity and honesty, or
- (iii) a majority of the members of the board of directors are not Canadian citizens or persons lawfully admitted to Canada for permanent residence and ordinarily resident in Canada;
- (d) the past conduct of the applicant affords reasonable grounds for belief that he will not carry on business in accordance with law and with integrity and honesty;
- (e) the applicant is carrying on activities that are, or will be, if the applicant is licensed, in contravention of this Act or the regulations;
- (f) the premises and accommodation, equipment and facilities in respect of which the licence is issued do not comply with the provisions of this Act and the regulations applicable thereto;
- (g) in the case of an application for a licence, the issuance of the licence is not in the public interest having regard to the needs and wishes of the public in the municipality in which the premises is located.

(2) No licence shall be issued under this section or renewed and no approval of the transfer of a licence shall be given, Where issue of licence prohibited

- (a) to a person who is under agreement with any person to sell the liquor of any manufacturer;
- (b) to a manufacturer of liquor, or his agent, or to a person who is so associated or connected therewith,

or financially interested therein as to be likely to promote the sale thereof;

- (c) to a person who by reason of any agreement, arrangement, concession, obligation or understanding, verbal or written, or direct or indirect, with any other person is or by reason thereof may be likely to promote the sale of liquor of any manufacturer; or
- (d) for premises in which a manufacturer of liquor has an interest, whether freehold or leasehold, or by way of mortgage or charge or other encumbrance, or by way of mortgage, lien or charge upon any chattel property therein and whether such interest is direct or indirect or contingent or by way of suretyship or guarantee.

Publication
of notice of
application

(3) Where an application is made for a licence under this section and, subject to compliance with clause (1) (g), the applicant is not disentitled, the Board shall advertise the fact of the application, the nature of the licence applied for and the location of the premises at least twice in a newspaper having general circulation in the municipality in respect of which the licence is applied for and shall fix in the advertisement a time and place in the licensing district for the residents of the municipality to make representations to the Board concerning the application.

Public
representa-
tion

(4) The Board or such member or members thereof as are designated by the chairman shall hold a public meeting in accordance with the notice under subsection (3) for the purpose of receiving the representations referred to therein and shall take such representations into consideration for the purposes of this section. 1975, c. 40, s. 6.

Expiry

7.—(1) A licence issued under section 4 or 5 expires two years after its issuance or latest renewal, subject to renewal by the Board in accordance with this Act and the regulations.

Continuance
pending
renewal

(2) Where, within the time prescribed therefor or, if no time is prescribed, before expiry of his licence, a licensee has applied for renewal of his licence and paid the prescribed fee, his licence shall be deemed to continue,

- (a) until the renewal is granted; or

- (b) where he is served with notice that the Board proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing has expired and, where a hearing is required, until the order has become final. 1975, c. 40, s. 7.

8.—(1) Subject to the regulations, the Board may issue a permit authorizing the holder thereof to keep for sale, offer for sale, sell or serve liquor on a special occasion. Special occasion permits

(2) An applicant for a permit for a special occasion that complies with the regulations is entitled to be issued the permit except upon the grounds set out in clause 6 (1) (d), (e) or (f) and subsection 6 (2) applies in respect of permits, with necessary modifications, in the same way as it applies in respect of licences. Issuance

(3) A permit may be issued by an officer of the Board designated by the Board for the purpose and such officer shall refer to the Board every application for a permit or renewal that he proposes to refuse. 1975, c. 40, s. 8. Idem

9.—(1) The Board may at any time review a licence or permit on its own initiative and attach such further terms and conditions as it considers proper to give effect to the purposes of this Act. Imposition of new terms and conditions

(2) The Board may, on the application of the holder of a licence or permit, remove any term or condition to which the licence or permit is made subject under subsection (1) where there is a change of circumstances. 1975, c. 40, s. 10. Removal of terms and conditions

10.—(1) Subject to section 11, the Board may refuse to issue or approve the transfer of a licence under section 6 or to issue a permit under section 8 where, in the Board's opinion, the applicant is not entitled to a licence or permit under the provisions applicable thereto. Refusal to issue

(2) Subject to section 11, the Board may refuse to renew or may suspend or revoke a licence issued under section 5 for any reason referred to in clauses 6 (1) (e) and (f) or where the licensee is in breach of a term or condition of his licence. Idem

(3) Subject to section 11, the Board may refuse to renew or may suspend or revoke a licence issued under section 6 for any reason that would disentitle the licensee Revocation, suspension or refusal to renew

to a licence under section 6 if he were an applicant or where the licensee is in breach of a term or condition of the licence.

Voluntary
cancellation

(4) The Board may cancel a licence upon the request in writing of the licensee in the prescribed form surrendering his licence.

Revocation
of permits

(5) Subject to section 11, the Board may revoke a permit issued under section 8 for any reason that would disentitle the holder to a permit if he were an applicant, or where the holder of the permit is in breach of a term or condition of the permit. 1975, c. 40, s. 11.

Notice of
proposal

11.—(1) Where the Board proposes,

- (a) to refuse to issue a licence or permit, renew a licence or approve the transfer of a licence;
- (b) to suspend or revoke a licence or permit; or
- (c) to attach terms and conditions to a licence or permit or to refuse to remove a term or condition of a licence or permit under section 9,

it shall serve notice of its proposal together with written reasons therefor on the applicant or holder of the licence or permit affected.

Interim
suspension

(2) Where the Board proposes to suspend or revoke a licence or permit the Board may, where the Board considers it to be necessary in the public interest, by order temporarily suspend the licence or permit and the order shall take effect immediately and where a hearing is required expires fifteen days from the date of the notice requiring the hearing unless the hearing is commenced in which case the Board or Tribunal holding the hearing may extend the time of expiration until the hearing is concluded.

Notice
requiring
hearing

(3) A notice under subsection (1) shall inform the applicant or holder of the licence or permit that he is entitled to a hearing by the Board if he mails or delivers to the Board, within fifteen days after the notice under subsection (1) is served on him, notice in writing requiring a hearing by the Board, and he may so require such a hearing.

(4) Where an applicant or holder of the licence or permit does not require a hearing by the Board in accordance with subsection (3), the Board may carry out the proposal stated in its notice under subsection (1). 1975, c. 40, s. 12.

Powers of
Board
where no
hearing

12.—(1) Where the Board is required to hold a hearing under section 11, the chairman of the Board shall refer the application to two or more members of the Board designated by the chairman, who shall constitute the Board for the purposes of the hearing and decision.

Members
holding
hearing

(2) The Board shall fix a time and place for the hearing of the application and shall at least ten days before the day fixed cause notice thereof to be served upon the applicant, and upon any other person appearing to the Board to have an interest in the application.

Notice
of hearing

(3) Every person upon whom notice of a hearing is served and any other person added by the Board is a party to the proceedings.

Parties

(4) Each member of the Board has power to administer oaths and affirmations for the purpose of any of its proceedings.

Oaths

(5) The Board shall hold the hearing and give its decision and reasons therefor in writing to the parties to the proceedings.

Decision
and reasons

(6) An order of the Board revoking or suspending a licence or permit takes effect immediately unless otherwise provided in the order but, where a hearing by the Tribunal is required, the Tribunal may grant a stay until the Tribunal makes its decision. 1975, c. 40, s. 13.

Stay

13.—(1) The Liquor Licence Appeal Tribunal is continued and shall consist of not more than seven members who shall be appointed by the Lieutenant Governor in Council, and the Lieutenant Governor in Council shall appoint one of such members as chairman and one or more of them as vice-chairmen.

Liquor
Licence
Appeal
Tribunal

(2) The members of the Tribunal shall be appointed to hold office for a term not exceeding five years and may be reappointed for further successive terms not exceeding five years each.

Term of
office

- Remuneration** (3) The members of the Tribunal shall be paid such salaries or other remuneration as may be fixed by the Lieutenant Governor in Council.
- Duties of chairman** (4) The chairman shall have general supervision and direction over the conduct of the affairs of the Tribunal, and shall arrange the sittings of the Tribunal and assign members to conduct hearings as circumstances require.
- Quorum** (5) Three members of the Tribunal constitute a quorum.
- Publication of decisions** (6) The Tribunal shall prepare and periodically publish a summary of its decisions and the reasons therefor.
- Oaths** (7) Each member of the Tribunal has power to administer oaths and affirmations for the purpose of any of its proceedings. 1975, c. 40, s. 14.
- Hearing by Tribunal** **14.**—(1) Any party to a proceeding before the Board under section 12 who is aggrieved by the decision of the Board may, within fifteen days after he is served with the decision of the Board, mail or deliver to the Board and the Tribunal a notice in writing requiring a hearing by the Tribunal.
- Idem** (2) Any person to whom a notice is given under section 11 may require a hearing by the Tribunal by giving notice in accordance with subsection (1) notwithstanding that he has not first required a hearing by the Board.
- Powers of Tribunal** (3) Where an applicant or holder of the licence or permit requires a hearing by the Tribunal in accordance with subsection (1), the Tribunal shall appoint a time for and hold the hearing and may by order confirm, alter or revoke the decision of the Board or direct the Board to take such action as the Tribunal considers the Board ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Board.
- Conditions of order** (4) The Tribunal may attach such terms and conditions to its order or to the licence or permit as it considers proper to give effect to the purposes of this Act.
- Parties** (5) The Board, the applicant or the holder of the licence or permit who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section. 1975, c. 40, s. 15.
- Members holding hearing not to have taken part in investigation, etc.** **15.**—(1) A member of the Tribunal holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing and shall not communicate directly or indirectly in relation

to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the Tribunal may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

(2) Notice of a hearing under section 14 shall afford the applicant or holder of the licence or permit a reasonable opportunity to show or achieve compliance before the hearing with all lawful requirements for the renewal or retention of the licence or permit. Opportunity to comply

(3) An applicant or holder of the licence or permit who is a party to proceedings under section 14 shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced, or any report the content of which will be given in evidence at the hearing. Examination of documentary evidence

(4) The oral evidence taken before the Tribunal shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court. Recording of evidence

(5) The findings of fact of the Tribunal pursuant to a hearing or review shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*. Findings of fact

(6) No member of the Tribunal shall participate in a decision of the Tribunal pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Tribunal shall be given unless all members so present participate in the decision. R.S.O. 1980, c. 484
Only members at hearing to participate in decision

(7) Documents and things put in evidence at a hearing of the Tribunal shall, upon the request of the person who produced them, be released to him by the Tribunal within a reasonable time after the matter in issue has been finally determined. Release of documentary evidence

(8) Notwithstanding any limitation of time for the giving of a notice requiring a hearing by the Tribunal and where it is satisfied that there are *prima facie* grounds for granting relief and that there are reasonable grounds for applying for the extension, the Tribunal may extend the time for giving the notice either before or after expiration of the time so limited and may give such directions as it considers proper consequent upon such extension. Extension of time for notice requiring hearing

Reasons (9) The Tribunal shall give its decision and reasons therefor in writing to the parties to the proceedings.

Stay (10) An order of the Tribunal revoking or suspending a licence or permit takes effect immediately but, where an appeal is made to the Divisional Court, the court may grant a stay until the disposition of the appeal. 1975, c. 40, s. 16.

Service **16.**—(1) Any notice required to be given or served in connection with proceedings of or before the Board or the Tribunal is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made.

Where service deemed to be made (2) Where service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice or order until a later date.

Exception (3) Notwithstanding subsections (1) and (2), the Tribunal may order any other method of service in respect of any matter before the Tribunal. 1975, c. 40, s. 17.

Decision of Tribunal re issuance final **17.** The decision of the Tribunal respecting the issuance of or refusal to issue a licence or permit or refusal to approve the transfer of a licence is final. 1975, c. 40, s. 18.

Appeal from decision to revoke, etc. **18.**—(1) Any party to proceedings before the Tribunal respecting the revocation, suspension or refusal to renew a licence or permit, or the imposition of or refusal to remove a term or condition of a licence or permit may appeal from the decision of the Tribunal to the Divisional Court in accordance with the rules of court.

Minister entitled to be heard (2) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

Powers of court on appeal (3) An appeal under this section may be made on questions of law only. 1975, c. 40, s. 19.

"Equity share" defined **19.**—(1) In this section, "equity share" means a share of a class of shares that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing.

Notice of transfer of shares (2) Every licence or permit holder that is a corporation shall notify the Board in writing within thirty days after the issue or the entry of a transfer of any shares of its capital stock or the happening of a condition by which shares

of its capital stock acquire voting rights where such issue, transfer or happening results in,

- (a) any shareholder and shareholders associated with him beneficially owning or controlling at least 10 per cent of the total number of all issued and outstanding equity shares of such stock; or
- (b) any shareholder and shareholders associated with him who already beneficially owns or controls 10 per cent or more of the total number of all issued and outstanding equity shares of such stock increasing such holding.

(3) In calculating the total number of equity shares ^{Idem} of the corporation beneficially owned or controlled for the purposes of this section, the total number shall be calculated as the total of all the shares actually owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equalling the total number of votes it carries.

(4) Where a licence or permit holder that is a corporation ^{Idem} is aware that a transfer which comes within the provisions of subsection (2) has taken place, it shall notify the Board in writing within thirty days after such knowledge came to the attention of its officers or directors, and not within thirty days of the entry of the transfer.

(5) For the purposes of subsection (2), a shareholder shall be ^{Associated shareholder} deemed to be associated with another shareholder if,

- (a) one shareholder is a company of which the other shareholder is an officer or director;
- (b) one shareholder is a partnership of which the other shareholder is a partner;
- (c) one shareholder is a company that is controlled directly or indirectly by the other shareholder;
- (d) both shareholders are companies and one shareholder is controlled directly or indirectly by the same individual or company that controls directly or indirectly the other shareholder;
- (e) both shareholders are members of a voting trust where the trust relates to shares of a corporation; or
- (f) both shareholders are associated within the meaning of clauses (a) to (e) with the same shareholder.

Application
of s. 4 (4)

(6) Where, in the opinion of the Board, an issue or transfer of equity shares of capital stock of a licensed corporation or the happening of a condition referred to in subsection (2) results in a shareholder and shareholders associated with him having a material or substantial interest in the corporation, such issue, transfer or happening shall be deemed to be a change of ownership and unless transferred under subsection 4 (4), the licence ceases to exist. 1975, c. 40, s. 20.

Investiga-
tion by
Minister

20. The Minister may by order appoint a person to make an investigation into any matter to which this Act applies as may be specified in the Minister's order and the person appointed shall report the result of his investigation to the Minister and, for the purposes of the investigation, the person making it has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such investigation as if it were an inquiry under that Act. 1975, c. 40, s. 21.

R.S.O. 1980,
c. 411

Investiga-
tion by
Board

21.—(1) Where, upon a statement made under oath, the Board believes on reasonable and probable grounds that any person has,

(a) contravened any of the provisions of this Act or the regulations; or

R.S.C. 1970,
c. C-34

(b) committed an offence under the *Criminal Code* (Canada) or under the law of any jurisdiction that is relevant to his fitness for a licence or permit under this Act,

the Board may, by order, appoint one or more persons to make an investigation to ascertain whether such a contravention of the Act or regulation or the commission of such an offence has occurred and the person appointed shall report the result of his investigation to the Board.

Powers of
investigator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the affairs of the person in respect of whom the investigation is being made and may,

(a) upon production of his appointment, enter at any reasonable time the premises of such person, not including any premises or part thereof occupied as living accommodation, and examine books, papers, documents and things relevant to the subject-matter of the investigation; and

- (b) inquire into negotiations, transactions, loans, borrowings made by or on behalf of or in relation to such person and into property, assets or things owned, acquired or alienated in whole or in part by him or any person acting on his behalf that are relevant to the subject-matter of the investigation,

and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

R.S.O. 1980,
c. 411

- (3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the investigation.

Obstruction
of
investigator

- (4) Where a justice of the peace is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the justice of the peace may, whether or not an inspection has been made or attempted under clause (2) (a), issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation to make the search at night.

Search
warrant

- (5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, papers, documents or things examined under clause (2) (a) or subsection (4) relating to the person whose affairs are being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, papers or documents, but such copying shall be carried out with reasonable dispatch and the books, papers or documents in question shall be promptly thereafter returned to the person whose affairs are being investigated.

Removal
of books,
etc.

- (6) Any copy made as provided in subsection (5) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents.

Admissibility
of copies

Appointment
of experts

(7) The Board may appoint any expert to examine books, papers, documents or things examined under clause (2) (a) or under subsection (4). 1975, c. 40, s. 22.

Inspections

22. Any person designated by the Board in writing may at any reasonable time enter upon any premises in respect of which a licence or permit is issued to make an inspection for the purpose of ensuring that the provisions of this Act and the regulations and the terms and conditions of the licence or permit are being complied with, and no person shall obstruct the person inspecting or withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the inspection. 1975, c. 40, s. 23.

Special
audit

23.—(1) The Board may at any time authorize and direct a representative of the Board appointed for that purpose to enter upon any premises where the books, accounts or records of or pertaining to any licensed manufacturer are kept or may be, and to inspect, study, audit, take extracts from such books, accounts or other records, and may, upon giving a receipt therefor, remove any such material that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person being inspected, and no person shall obstruct the person inspecting or withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the inspection.

Admissibility
in evidence

(2) Any copy made as provided in subsection (1) and purporting to be certified by an inspector is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original. 1975, c. 40, s. 24.

Matters
confidential

24.—(1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under this Act, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

(a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act; or

(b) to his counsel; or

(c) with the consent of the person to whom the information relates.

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act. 1975, c. 40, s. 25. Testimony in civil suit

25. Subject to sections 26 and 27 and the regulations, no licence shall be issued or government store established of a class for the sale of liquor in a municipality, Prohibited areas

(a) in which the sale of liquor or the sale of liquor under that class of licence or store was prohibited under the law as it existed immediately before the 4th day of February, 1976; or

(b) in which, although the sale of liquor is not prohibited by law, no licence has been issued or government store established since the 16th day of September, 1916. 1975, c. 40, s. 26.

26.—(1) The council of a municipality may submit one or more of the questions prescribed by the regulations respecting the authorization for the sale of liquor in the municipality to a vote. Submission by council to vote

(2) The council of a municipality shall submit to a vote Idem such questions prescribed by the regulations respecting the authorization for the sale of liquor in the municipality as are requested by petition signed by at least 25 per cent of the persons appearing on the list of electors, as revised, prepared for the previous municipal election. 1977, c. 62, s. 122.

(3) Where 60 per cent of the electors voting on a question required to be submitted by virtue of clause 25 (a) vote in the affirmative, it is lawful to establish government stores, or issue the classes of licences in the municipality accordingly. Affirmative vote

(4) Where 40 per cent of the electors voting on a question required to be submitted by virtue of clause 25 (b) vote in the affirmative, it is lawful to establish government stores or issue the classes of licences in the municipality accordingly. 1975, c. 40, s. 27 (2, 3). Idem

27.—(1) The council of a municipality in which a government store is established or liquor is authorized to be sold under a licence may, and on petition as provided in section 26 shall, submit to the electors such questions respecting the closing of the store or premises as are prescribed by the regulations. Local option to cease sale

Where
negative
vote polled

(2) Where 60 per cent of the electors voting on the question or questions vote in the negative, from and after the 31st day of March in the following year, any government store established in the municipality shall be closed, or licences of any class for premises in the municipality shall be discontinued, as the case may be, in accordance with the question or questions submitted and voted upon. 1975, c. 40, s. 28.

Questions
not to be
submitted
again for
three years

28. Where a question is submitted in a municipality under section 26 or 27, neither that question nor any other question shall be submitted in the municipality until after the expiration of a period of three years from the date of such submission. 1975, c. 40, s. 29.

Day of
polling
R.S.O. 1980,
c. 308

29. The day fixed for taking the vote on any question or questions shall be the day upon which, under the *Municipal Elections Act*, a poll would be held at the election of members of the council of the municipality unless the council, with the approval of the Board, fixes some other day and notifies the clerk of the municipality to that effect, but a poll shall not be held on any such question or questions until after the expiration of two months from the passing of a by-law for submitting the question or questions where the council submits the question or questions without a petition, nor until after the expiration of two months from the filing of the petition, as the case may be. 1977, c. 62, s. 124, *part*.

Who may
vote

30.—(1) The persons qualified to vote upon a question or questions are such persons as would be eligible to vote at an election held on that day pursuant to the *Municipal Elections Act*. 1977, c. 62, s. 124, *part*.

Qualification
period for
determining
eligibility
of electors

(2) Where the vote is held on a day other than the date set for the election of members to the council of the municipality, for the purpose of determining the period during which a person may qualify as an elector entitled to vote on the question, the reference in paragraph 4 of subsection 92 (4) of the *Municipal Elections Act* to the order of the Ontario Municipal Board given under section 132 of the *Municipal Act* shall be deemed to be a reference to the date of the approval given by the Board as required by section 29 of this Act. 1978, c. 12, s. 8.

R.S.O. 1980,
c. 302

Application of
R.S.O. 1980,
c. 308

31. The provisions of the *Municipal Elections Act* apply to the taking of a vote under this Act. 1977, c. 62, s. 124, *part*.

Return to
Board

32. The returning officer shall make his return to the Board showing the number of votes polled for the affirmative and negative on the question or questions submitted and,

upon the receipt of such return, the Board shall give notice thereof in *The Ontario Gazette* showing the total number of votes polled in the municipality for the affirmative and negative upon the question or questions. 1977, c. 62, s. 124, *part*.

33.—(1) No amalgamation of a municipality with another municipality and no annexation of the whole or a part of a municipality to another municipality affects the operation of this Act at the time of the amalgamation or annexation in the municipality amalgamated or municipality or part annexed or elsewhere until such operation is affected pursuant to a vote under this Act in the municipality amalgamated or municipality or part annexed, as the case may be. 1975, c. 40, s. 34 (1).

Amalgamations.
annexations
not to affect
status quo
under Act

(2) The persons qualified to sign a petition pursuant to section 26 or 27 are the persons whose names appeared on the list of electors, as revised, prepared for the previous municipal election held in the municipality amalgamated or municipality or part annexed, as the case may be.

Who entitled
to sign
petition

(3) The persons qualified to vote upon a question or questions are the persons who would be eligible to vote at an election held in the municipality amalgamated or municipality or part annexed, as the case may be, held pursuant to the *Municipal Elections Act*. 1977, c. 62, s. 125.

Who
entitled
to vote

R.S.O. 1980,
c. 308

34.—(1) Where it is made to appear to the satisfaction of the Board that a person, resident or sojourning in Ontario, by excessive drinking of liquor, misspends, wastes or lessens his estate, or injures his health, or interrupts the peace and happiness of his family, the Board may make an order of interdiction prohibiting the sale of liquor to him until further ordered.

Interdiction
orders

(2) Sections 11, 12 and 14 apply in respect of the proposal to make and the making of the interdiction order in the same manner as to a proposal to revoke and the revocation of a licence.

Hearings

(3) Every interdicted person keeping or having in his possession or under his control or consuming any liquor is guilty of an offence, and the court making the conviction may in and by the conviction declare the liquor and all packages in which the liquor is contained forfeited to Her Majesty in right of Ontario.

Disregard
of order

(4) Upon an order of interdiction being made, the interdicted person shall deliver forthwith to the Board all liquor

Delivery of
liquor

in his possession or under his control to be kept for him by the Board until the order of interdiction is revoked or set aside, or, at the option of the Board, such liquor may be purchased from him at a price to be fixed by the Board.

Notice
of order

(5) The Board shall notify all managers of government stores, and such other persons as are prescribed by the regulations of the order of interdiction.

Supply of
liquor to
interdicted
person

(6) No person shall knowingly procure for, sell or give any liquor to an interdicted person, nor directly or indirectly assist in procuring or supplying any liquor to an interdicted person.

Interdicted
person not to
enter govern-
ment store

(7) No interdicted person shall enter upon the premises of a government store. 1975, c. 40, s. 35.

Setting
aside of
interdiction
order

35. Upon an application to the Board by a person in respect of whom an order of interdiction has been made, and upon it being made to appear to the satisfaction of the Board that the circumstances of the case did not warrant the making of the order of interdiction or upon proof that the interdicted person has refrained from drunkenness for at least twelve months immediately preceding the application, the Board may by order set aside the order of interdiction, and the interdicted person may be restored to all his rights under this Act and the regulations, and the Board shall accordingly forthwith notify all persons notified of the original order. 1975, c. 40, s. 36.

Interpre-
tation

36.—(1) In this section,

(a) “detoxification centre” means a public hospital designated by the regulations;

(b) “municipality” means a municipality responsible for maintaining a police force.

Taking to
detoxifica-
tion centre
in lieu
of charge

(2) Where a police officer finds a person in a public place apparently in contravention of subsection 45 (3), he may take such person into custody and, in lieu of laying an information in respect of the contravention, may escort the person to a detoxification centre.

Protection
from
liability

(3) No action or other proceedings for damages shall be instituted against any physician or any hospital or officer or employee thereof on the grounds only that he examines or treats without consent a person in a detoxification centre under subsection (2) who is brought to the centre by a police officer. 1975, c. 40, s. 37.

Detention
for
reclamation

37. Where it appears that a person in contravention of subsection 45 (3) may benefit therefrom, the court may order the person to be detained for a period of ninety days or such lesser

period as the court thinks advisable in an institution for the reclamation of alcoholics that is designated for the purpose by the regulations, but, if at any time during this period the superintendent of the institution is of the opinion that further detention therein will not benefit him, the superintendent may release him. 1975, c. 40, s. 38.

38.—(1) No person shall, directly or indirectly, hold himself out or act as agent or representative of a manufacturer in respect of the sale of liquor or canvass for, receive, take or solicit an order for the sale of liquor by a manufacturer or hold himself out or act as an agent or intermediary for the purpose unless he is registered with the Board as an agent or representative of such manufacturer. Registration
of manu-
facturers'
agents

(2) An applicant for registration is entitled to be registered except where the past conduct of the applicant affords reasonable grounds for belief that he will not carry on business in accordance with the law and with integrity and honesty. Grounds
for refusal

(3) The provisions of this Act applying to the issuance, refusal, suspension or revocation of a licence apply, with necessary modifications, to the granting, refusal, suspension or revocation of a registration. 1975, c. 40, s. 39. Procedures

39. The Lieutenant Governor in Council may make Regulations regulations,

- (a) prescribing classes of licences and permits and the terms and conditions to which each class is subject;
- (b) providing for issuance of licences and for renewals and transfer thereof;
- (c) establishing licensing districts and prescribing the maximum number of licences for the sale of liquor in each licensing district or any part thereof;
- (d) prescribing classes of premises and confining the issuance of any specified class or classes of licences to any specified class or classes of premises;
- (e) providing for the reclassification of premises by the Board;
- (f) governing and providing for the issuance of permits for special occasions and prescribing the special occasions for which permits may be issued;

- (g) providing for the registration of agents and representatives of manufacturers;
- (h) regulating the conduct of agents and representatives registered under section 38;
- (i) requiring the payment of fees in respect of applications for and the issuance, renewal or transfer of licences, permits and registrations;
- (j) prescribing classes of licences or permits that may be issued in respect of premises in a municipality notwithstanding section 25;
- (k) requiring the holders of licences and permits to provide the Board with such information and returns respecting the sale of liquor and the premises, methods and practices connected therewith as is prescribed and requiring any information provided to be verified by oath;
- (l) controlling the advertising of liquor or its availability for sale and requiring that the form of advertisement or public notice be subject to the approval of the Board;
- (m) exempting uses of alcohol from the application of section 49;
- (n) prescribing the questions for the purpose of voting on questions under sections 26 and 27;
- (o) prescribing the form of ballots to be used for voting upon a question submitted in a municipality;
- (p) prescribing standards for premises or the part thereof used in connection with the sale of liquor by the holders of licences and permits and the accommodation, equipment and facilities therein and prescribing or prohibiting methods and practices in connection with the serving of liquor;
- (q) prescribing the circumstances under which the manufacturer of liquor may give by gift any liquor;
- (r) prescribing the minimum alcoholic content of wine and beer for the purposes of clauses (1) (b) and (p);
- (s) prescribing classes of premises in which the sale of liquor is authorized on which a person under the age of eighteen years may enter;
- (t) designating public hospitals as detoxification centres;

- (u) designating institutions for the reclamation of alcoholics detained therein under section 37 and governing the transfer and admission of persons to and detention of persons in such institutions and providing for the government and operation of such institutions;
- (v) prescribing rules for proceedings before the Board or the Tribunal;
- (w) prescribing the form and content of the application for and of the card for proof of age, requiring the payment of a fee for its issuance and prescribing the amount thereof;
- (x) exempting any person, product or premises or any class thereof from any provision of this Act or the regulations;
- (y) prescribing any matter that by this Act is required or permitted to be or referred to as prescribed by the regulations;
- (z) prohibiting or regulating and controlling the possession of liquor in provincial parks. 1975, c. 40, s. 40; 1978, c. 42, s. 1.

40. Liquor shall be deemed to be an intoxicating liquor for the purposes of the *Importation of Intoxicating Liquors Act* (Canada). 1975, c. 40, s. 41.

Intoxicating liquor for purposes of R.S.C. 1970, c. I-4

41. No person shall purchase liquor except from a government store or from a person authorized by licence or permit to sell. 1975, c. 40, s. 42.

Unlawful purchase

42. No manufacturer of liquor shall in Ontario, by himself, his clerk, servant or agent, give any liquor to any person, except as is permitted by and in accordance with the regulations. 1975, c. 40, s. 43.

Unlawful gift by manufacturer

43. No person shall sell or supply liquor or permit liquor to be sold or supplied to any person in or apparently in an intoxicated condition. 1975, c. 40, s. 44.

Sale to persons under influence

44.—(1) No person shall knowingly sell or supply liquor to a person under the age of nineteen years.

Prohibition re sale of liquor

(2) No person shall sell or supply liquor to a person who is apparently under the age of nineteen years, and, in any prosecution for a contravention of this subsection, the justice

Idem

shall determine from the appearance of such person and other relevant circumstances whether he is apparently under the age of nineteen years.

Prohibition
re purchase
of liquor

(3) No person under the age of nineteen years shall have, consume, attempt to purchase, purchase or otherwise obtain liquor.

Where
subs. (3) does
not apply

(4) Subsection (3) does not operate to prohibit a person of the age of eighteen years being in possession of liquor during the course of his employment on premises in which the sale of liquor is authorized.

Prohibition
re entering
premises

(5) No person under the age of nineteen years shall enter or remain on premises in which the sale of liquor is authorized except those classes of premises that are prescribed by the regulations.

Exception
to subs. (5)

(6) Subsection (5) does not apply to a person of the age of eighteen years employed on premises in which the sale of liquor is authorized while he is on such premises during the course of his employment.

Application
of section

(7) This section does not apply to the supplying of liquor to a person under the age of nineteen years by the parent or guardian of such person in a residence as defined in section 45 or to the consumption of liquor therein by such person.

Card as
proof of
age

(8) A person who sells or supplies liquor to another person shall be deemed not to be in contravention of subsection (1) or (2) if, before he sells or supplies the liquor, a card in the form prescribed by the regulations is produced to him by the person to whom he sells or supplies the liquor, which purports to be issued by the Board to the person producing it and if there is no apparent inconsistency on the face of the card or between the card and the person producing it. 1978, c. 42, s. 2.

Interpre-
tation

45.—(1) In this section,

(a) “public place” means a place to which the general public is invited or permitted access, whether or not for a fee;

(b) “residence” means a place that is actually occupied and used as a dwelling, whether or not in common

with other persons, including all premises used in conjunction therewith that is not a public place, and where the place occupied and used as a dwelling is a tent, includes the land immediately adjacent and used in conjunction therewith.

(2) No person shall consume liquor in any place other than a premises in respect of which a licence or permit is issued or a residence. 1975, c. 40, s. 46 (1, 2). Unlawful consumption

(3) No person shall have liquor in any place other than a premises in respect of which a licence or permit is issued or a residence except where the liquor is in a closed container and the container is not displayed to public view. 1978, c. 42, s. 3 (1). Unlawful possession

(4) No person shall be in an intoxicated condition in a public place or in any part of a residence that is used in common by persons occupying more than one dwelling therein. 1975, c. 40, s. 46 (3). Intoxication in public place

(5) A police officer may arrest without warrant any person whom he finds contravening subsection (4) where, in the opinion of the police officer, to do so is necessary for the safety of the person or is necessary to protect another person from injury. 1978, c. 42, s. 3 (2). Arrest without warrant

46.—(1) The council of a municipality, including a metropolitan or regional municipality, may by ~~by-law~~ ^{By-law designating public place} designate stadia, arenas and other recreational areas within the municipality owned or controlled by the municipality as places where possession of liquor is prohibited.

(2) A designation under subsection (1) does not operate to prevent the Board from issuing any licence or permit under this Act. Non-application of subs. (1)

(3) No person shall have liquor in a place designated under subsection (1). Unlawful possession

(4) Subsection (3) does not apply to a person in possession of liquor under the authority of a licence or permit or in possession of liquor purchased on premises in respect of which a licence or permit is issued. 1978, c. 42, s. 4. Exception to subs. (3)

47.—(1) The holder of a licence or permit issued in respect of premises shall ensure that any person whom he has reasonable grounds to believe, Power to eject from licensed premises

(a) is unlawfully on the premises;

- (b) is on the premises for an unlawful purpose; or
- (c) is contravening the law on the premises,

does not remain on the premises and may request the person to leave the premises immediately and if the request is not forthwith complied with may remove him or cause him to be removed by the use of no more force than is necessary.

Order to
vacate
premises

(2) Where there are reasonable grounds to believe that a disturbance or breach of the peace is being caused on a licensed premises sufficient to constitute a threat to the public safety, a police officer may require that all persons vacate the premises and the holder of the licence or permit shall ensure, with the assistance of the police officer, if necessary, that the premises are vacated. 1975, c. 40, s. 47.

Right to
refuse
entry

(3) The holder of a licence or his employee may,

- (a) request a person to leave; or
- (b) forbid a person to enter the licensed premises,

where he has reason to believe that the presence of that person on the premises is undesirable.

Not to
remain after
request to
leave

(4) No person shall,

- (a) remain on licensed premises after he is requested to leave by the holder of the licence or his employee; or
- (b) re-enter the licensed premises on the same day he was requested to leave. 1978, c. 42, s. 5.

Conveying
liquor in
vehicle
R.S.O. 1980,
c. 198

48.—(1) No person shall drive or have the care or control of a motor vehicle as defined in the *Highway Traffic Act* or motorized snow vehicle, whether it is in motion or not, while there is contained therein any liquor, except,

- (a) liquor in a bottle or package that is unopened and the seal unbroken; or
- (b) liquor in a bottle or package that is packed with personal effects in baggage that is fastened closed or that is not otherwise readily available to any person in the vehicle.

Search of
vehicles

(2) A police officer may at any time, without a warrant, enter and search any vehicle or other conveyance in which he has reasonable grounds to believe that liquor is unlawfully

kept or had, and search any person found in such vehicle or other conveyance. 1975, c. 40, s. 48.

49. No person shall,

Unlawful
consumption
of alcohol

(a) drink alcohol in a form that is not a liquor; or

(b) supply alcohol in a form that is not a liquor to another when he knows or ought to know that the other intends it to be used as a drink. 1975, c. 40, s. 49.

50.—(1) No person shall advertise liquor or display public notice that liquor is available for sale except in accordance with the regulations.

Regulation of
advertising

(2) Where the Board believes on reasonable and probable grounds that any advertisement or public notice is in contravention of this Act or the regulations, the Board may order the immediate cessation of the use of such advertisement or notice, and the provisions of this Act applying to the imposition by the Board of a condition of the licence apply with necessary modifications to the order, and the order of the Board shall take effect immediately, but the Tribunal may grant a stay until the Board's order becomes final. 1975, c. 40, s. 50.

Order of
cessation

51.—(1) Liquor kept for sale or offered for sale in contravention of section 4 and liquor purchased in contravention of section 41 is forfeited to the Board.

Forfeiture
of liquor

(2) Where liquor to which subsection (1) applies is seized by a police officer, he shall forthwith make or cause to be made a report of the particulars of the seizure to the Board and shall deliver the liquor or cause the liquor to be delivered to the Board as soon as the due process of the law permits. 1975, c. 40, s. 51.

Report and
delivery

52.—(1) Any person who is over the age of nineteen years and not an interdicted person may apply to the Board for a card indicating that such person has attained the age of nineteen years.

Card
indicating
age

(2) A card issued by the Board shall contain a photographic likeness of the applicant and otherwise be in the form prescribed by the regulations.

Form of
card

(3) No person shall supply false information or a false photographic likeness in an application made under subsection (1), or alter in any way, any card issued by the Board.

False
information

False
card

(4) No person shall present as evidence of his age any card purporting to be issued by the Board other than a card issued to him by the Board. 1975, c. 40, s. 52 (2-4).

Civil
liability

53. Where any person or his servant or agent sells liquor to or for a person whose condition is such that the consumption of liquor would apparently intoxicate him or increase his intoxication so that he would be in danger of causing injury to his person or injury or damage to the person or property of others, if the person to or for whom the liquor is sold while so intoxicated,

R.S.O. 1980,
c. 152

(a) commits suicide or meets death by accident, an action under Part V of the *Family Law Reform Act* lies against the person who or whose servant or agent sold the liquor; or

(b) causes injury or damage to the person or property of another person, such other person is entitled to recover an amount to compensate him for his injury or damage from the person who or whose servant or agent sold the liquor. 1975, c. 40, s. 53.

Arrest
without
warrant

54. Where a police officer finds a person contravening this Act and such person refuses to give his name and address or there are reasonable grounds to believe that the name or address given is false, the police officer may arrest such person without warrant. 1975, c. 40, s. 54.

Offences

55.—(1) Every person who,

(a) knowingly furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;

(b) knowingly fails to comply with an order of the Board under subsection 50 (2);

(c) contravenes any provision of this Act or the regulations,

and every director or officer of a corporation who knowingly concurs in such furnishing, failure or contravention is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than one year, or to both. 1975, c. 40, s. 55 (1); 1978, c. 42, s. 7 (1).

Additional
penalty

(2) In addition to any other penalty or action under this Act, the licence of every person who contravenes subsection 44 (2) shall be suspended for a period of not less than seven days.

(3) Where a person who is the holder of a licence contravenes subsection 44 (2), the fine imposed under subsection (1) shall be not less than \$500. ^{Minimum fine}

(4) Where a person who is not the holder of a licence contravenes subsection 44 (2), the fine imposed under subsection (1) shall be not less than \$100. 1978, c. 42, s. 7 (2). ^{Idem}

(5) Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein. ^{Corporations}

(6) No proceeding to prosecute under clause (1) (a) or (b) shall be instituted except with the consent of the Minister. ^{Consent of Minister}

(7) No proceeding to prosecute under clause (1) (a) shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Board. ^{Limitation}

(8) No proceeding to prosecute under clause (1) (b) or (c) shall be commenced more than two years after the time when the subject-matter of the proceeding arose. 1975, c. 40, s. 55 (2-5). ^{Idem}

56.—(1) Where liquor is found by a police officer under circumstances where the liquor constitutes evidence necessary to prove a contravention of this Act, or where an offence is committed under this Act and a police officer, on reasonable and probable grounds, in view of the offence committed and the presence of liquor, believes that a further offence is likely to be committed, the police officer may seize and take away the liquor and packages in which it is kept. 1978, c. 42, s. 8. ^{Seizure of liquor}

(2) A provincial offences court may, upon the application of any person made within thirty days of a seizure under subsection (1), order that the things seized be restored forthwith to the applicant where the court is satisfied that, ^{Order of restoration}

(a) the applicant is entitled to possession of the things seized; and

(b) the things seized are not required as evidence in any proceedings in respect of an offence under this Act,

and where the court is satisfied that the applicant is entitled to possession of the things seized but is not satisfied as to the matter mentioned in clause (b), it shall order that the things seized be restored to the applicant,

(c) upon the expiration of three months from the date of the seizure, if no proceedings in respect of an offence under this Act have been commenced; or

(d) upon the final conclusion of any such proceedings.

Forfeiture

(3) Where no application has been made for the return of any thing seized under subsection (1) or an application has been made but upon the hearing thereof no order of restoration has been made, the thing seized is forfeited to the Board.

Idem

(4) Where a person is convicted of an offence under this Act, any thing seized under subsection (1) by means of which the offence was committed is forfeited to the Board. 1975, c. 40, s. 56 (2-4).

Certificate
as evidence

57. A statement as to,

(a) the licensing or non-licensing of any person;

(b) the filing or non-filing of any document or material required or permitted to be filed with the Board;

(c) the time when the facts upon which proceedings are based first came to the knowledge of the Board; or

(d) any other matter pertaining to such licence, non-licensing, filing or non-filing,

purporting to be certified by the chairman of the Board is, without proof of the office or signature of the chairman, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution. 1975, c. 40, s. 57.

Analysis

58. In any prosecution under this Act or the regulations, upon production of a certificate or report signed or purporting to be signed by a federal or provincial analyst as to the analysis or ingredients of any liquor or other fluid or any preparation, compound or substance, the certificate or report is conclusive evidence of the facts stated in the certificate or report and of the authority of the person giving or making it without any proof of appointment or signature. 1975, c. 40, s. 58.

Exception
for drugs
and
medicines

59. Nothing in this Act prevents the sale,

(a) of a drug dispensed as a medicine by a person authorized to do so under the *Health Disciplines Act*;

- (b) of a drug compounded, dispensed or supplied in and by a hospital or a health or custodial institution approved or licensed under any general or special Act under the authority of a prescriber as defined in Part VI of the *Health Disciplines Act* for a person under health care provided by such hospital or health or custodial institution; R.S.O. 1980,
c. 196
- (c) subject to section 49, of a medicine registered under the *Food and Drugs Act* (Canada); or R.S.C. 1970,
c. F-27
- (d) of a drug to a person authorized under the *Health Disciplines Act* to dispense, prescribe or administer drugs,

or the purchase of such drug or medicine sold in accordance with this section. 1975, c. 40, s. 59; 1978, c. 42, s. 9.

CHAPTER 245

Live Stock and Live Stock Products Act

1. In this Act,

Interpre-
tation

- (a) “Board” means the Agricultural Licensing and Registration Review Board under the *Ministry of Agriculture and Food Act*; R.S.O. 1980, c. 270
- (b) “Commissioner” means the Live Stock Commissioner;
- (c) “grade” means the classification of any live stock or live stock product according to the prescribed standards;
- (d) “inspector” means an inspector appointed for the purposes of this Act;
- (e) “licence” means a licence required under this Act;
- (f) “live stock” means animals or poultry designated as live stock in the regulations;
- (g) “live stock dealer” means a person engaged in the business of buying or selling live stock on his own account or as an agent;
- (h) “live stock product” means an animal or poultry product designated as a live stock product in the regulations;
- (i) “Minister” means the Minister of Agriculture and Food;
- (j) “regulations” means the regulations made under this Act. 1980, c. 5, s. 1.

2. No person shall engage in business,

Licence
required

- (a) as a live stock dealer; or
- (b) as a dealer in live stock products,

without a licence therefor from the Commissioner. 1980, c. 5, s. 2.

Licence
issue

3.—(1) The Commissioner shall issue a licence to a person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee unless, after a hearing, he is of opinion that,

- (a) the past conduct of the applicant or, where the applicant is a corporation, of its officers or directors, affords reasonable grounds for belief that the operations that would be authorized by the licence will not be carried on in accordance with law;
- (b) the applicant is not in a position to observe or carry out the provisions of this Act and the regulations or the conditions under which the licence is issued; or
- (c) any other ground for refusal to issue specified in the regulations exists.

Renewal

(2) Subject to section 4, the Commissioner shall renew a licence on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee. 1980, c. 5, s. 3.

Refusal
to renew,
suspension
or
cancellation

4.—(1) The Commissioner may refuse to renew or may suspend or cancel a licence if after a hearing he is of opinion that,

- (a) the premises, facilities and equipment used in the operations authorized by the licence do not comply with the regulations;
- (b) the licensee or, where the licensee is a corporation, any officer, director or servant thereof has contravened or has permitted any person under his control or direction in connection with the operations authorized by the licence to contravene any provision of this Act or the regulations or of any other Act or the regulations thereunder or of any law applying to the carrying on of the operations authorized by the licence or of the conditions under which the licence was issued and such contravention warrants such refusal to renew, suspension or cancellation of the licence; or
- (c) any other ground for refusal to renew, suspension or cancellation specified in the regulations exists.

Provisional
suspension,
etc.

(2) Notwithstanding subsection (1), the Commissioner, by notice to a licensee and without a hearing, may provisionally

refuse to renew or suspend the licensee's licence where in the Commissioner's opinion it is necessary to do so for the immediate protection of the safety or health of any person or the public and the Commissioner so states in such notice giving his reasons therefor, and thereafter the Commissioner shall hold a hearing to determine whether renewal of the licence should be refused or whether the licence should be further suspended or cancelled under this Act and the regulations.

(3) Subject to subsection (2), where within the time prescribed therefor or, if no time is prescribed, before expiry of his licence, a licensee has applied for a renewal of his licence and paid the prescribed fee, and has observed or carried out the provisions of this Act and the regulations, his existing licence shall be deemed to continue until he has received the decision of the Commissioner on his application for renewal. 1971, c. 50, s. 52 (2), *part.*

Continuation
of licence
pending
renewal

5.—(1) Notice of a hearing by the Commissioner under section 3 or 4 shall afford to the applicant or licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence.

Notice of
hearing

(2) An applicant or licensee who is a party to proceedings in which the Commissioner holds a hearing shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. 1971, c. 50, s. 52 (2), *part.*

Examination
of docu-
mentary
evidence

6. Where the Commissioner has refused to issue or renew or has suspended or cancelled a licence pursuant to a hearing, he may, at any time of his own motion or on the application of the person who was the applicant or licensee, vary or rescind his decision, but the Commissioner shall not vary or rescind his decision adversely to the interests of any person without holding a rehearing to which such person is a party and may make such decision pursuant to such rehearing as he considers proper under this Act and the regulations. 1971, c. 50, s. 52 (2), *part.*

Variation of
decision by
Com-
missioner

7.—(1) Where the Commissioner refuses to issue or renew or suspends or cancels a licence, the applicant or licensee may by written notice delivered to the Commissioner and filed with the Board within fifteen days after receipt of the decision of the Commissioner appeal to the Board.

Appeal to
Board

(2) The Board may extend the time for the giving of notice by an applicant or licensee under subsection (1), either before

Extension of
time for
appeal

or after expiration of such time, where it is satisfied that there are *prima facie* grounds for appeal and that there are reasonable grounds for applying for the extension.

Powers of Board

(3) Where an applicant or licensee appeals to the Board under this section, the Board shall hear the appeal by way of a hearing *de novo* to determine whether the licence should be issued, renewed, suspended or cancelled and may, after the hearing, confirm or alter the decision of the Commissioner or direct the Commissioner to do any act he is authorized to do under this Act and the regulations and as the Board considers proper and, for such purpose, the Board may substitute its opinion for that of the Commissioner.

Effect of decision pending disposal of appeal

(4) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Commissioner, unless the Commissioner otherwise directs, the decision of the Commissioner is effective until the appeal is disposed of. 1971, c. 50, s. 52 (2), *part*.

Parties

8.—(1) The Commissioner, the appellant and such other persons as the Board may specify are parties to proceedings before the Board under this Act.

Members making decision not to have taken part in investigation, etc.

(2) Members of the Board assigned to render a decision after a hearing shall not have taken part prior to the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but such members may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Recording of evidence

(3) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings of fact

(4) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

R.S.O. 1980,
c. 484

Only members at hearing to participate in decision

(5) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the

parties, no decision of the Board shall be given unless all members so present participate in the decision. 1971, c. 50, s. 52 (2), *part*.

9.—(1) Any party to the hearing before the Board may appeal from the decision of the Board to the Divisional Court in accordance with the rules of court. ^{Appeal to court}

(2) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section. ^{Minister entitled to be heard}

(3) The chairman of the Board shall file with the Registrar of the Supreme Court the record of the proceedings before the Board which, together with a transcript of the evidence before the Board, if it is not part of the Board's record, shall constitute the record in the appeal. ^{Record to be filed in court}

(4) An appeal under this section may be made on any question that is not a question of fact alone and the court may confirm or alter the decision of the Board or direct the Commissioner to do any act he is authorized to do under this Act or may refer the matter back to the Board for reconsideration by the Board as the court considers proper and the court may substitute its opinion for that of the Commissioner or the Board. ^{Powers of court on appeal}

(5) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Board, unless the Board otherwise directs, the decision of the Board is effective until the appeal is disposed of. 1971, c. 50, s. 52 (2), *part*. ^{Effect of decision of Board pending disposal of appeal}

10. The Lieutenant Governor in Council may appoint one or more inspectors for the purposes of this Act and may fix their remuneration and allowance for expenses. R.S.O. 1970, c. 251, s. 3. ^{Appointment of inspectors}

11.—(1) Subject to subsection (4), any inspector, for the purpose of enforcing this Act and the regulations, may, ^{Power of inspectors}

- (a) enter any place, premises or vehicle containing or used for the storage or carriage of any live stock or live stock product;
- (b) stop on a highway any vehicle that he believes to contain any live stock or live stock product and inspect the vehicle and any live stock or live stock product found therein;
- (c) require the production of any books, records or other documents relating to any live stock or live stock

product or the furnishing of copies of or extracts from such books, records or other documents;

- (d) take samples of any live stock product in the manner prescribed in the regulations;
- (e) delay the shipment of any live stock or live stock product for the time necessary to complete his inspection thereof;
- (f) refuse to inspect or mark or give any certificate respecting any live stock or live stock product found in any place, premises or vehicle considered by him to be unsanitary or unsuitable for inspection purposes;
- (g) seize and detain any live stock or live stock product that has been manufactured, packed, branded, labelled, marked, shipped or transported in contravention of this Act or the regulations, and, subject to any order made by the Minister under section 12, require the owner to remove such live stock or live stock product from the place of detention at the expense of the owner. R.S.O. 1970, c. 251, s. 4 (1); 1971, c. 50, s. 52 (3).

Obstruction

(2) No person shall obstruct any inspector in the performance of his duties or refuse to permit the inspection of any live stock or live stock product or furnish any inspector with false information.

Production of records

(3) Every person shall, when required by an inspector, produce any books, records or other documents relating to any live stock or live stock product or copies of or extracts from such books, records or other documents. R.S.O. 1970, c. 251, s. 4 (2, 3).

Power to enter dwelling
R.S.O. 1980, c. 400

(4) Except under the authority of a warrant under section 142 of the *Provincial Offences Act*, an inspector shall not enter any part of a dwelling without the consent of the occupant.

Appeal from decision of inspector

(5) Where an inspector has,

- (a) delayed the shipment of any live stock or live stock products under clause (1) (e);
- (b) refused to inspect or mark or give a certificate under clause (1) (f); or
- (c) seized or detained any live stock or live stock products under clause (1) (g),

he shall immediately notify the owner and the owner may appeal to the Commissioner from the decision of the inspector.

(6) The Commissioner may, after hearing an appeal under this section, confirm or revoke the decision appealed from and may direct the inspector to do any act he is authorized to do under this Act and the regulations. Decision of Commissioner

(7) The appellant, the inspector who made the decision and such other persons as the Commissioner may specify are parties to proceedings before the Commissioner under subsection (6). Parties

(8) An appeal under this section may be made in writing or orally or by telephone to the Commissioner, but the Commissioner may require the grounds for appeal to be specified in writing before the hearing. 1971, c. 50, s. 52 (4). How appeal made

12.—(1) Any live stock or live stock product seized or detained by an inspector shall be disposed of as the Minister may direct. Disposal of seized live stock, etc.

(2) Any live stock or live stock product seized, detained or disposed of under this Act is at the risk and expense of the owner thereof, and the inspector shall immediately notify the owner that such live stock or live stock product has been seized, detained or disposed of, as the case may be. R.S.O. 1970, c. 251, s. 5. Live stock seized and detained at expense of owner, etc.

13. Every live stock dealer and every dealer in live stock products shall, Dealers' obligations

(a) furnish security or proof of financial responsibility as required by the regulations;

(b) make payment for live stock or live stock products in the manner and in accordance with the conditions prescribed by the regulations; and

(c) keep such books and records, make such returns and furnish such information, as are prescribed by the regulations. 1980, c. 5, s. 4, *part.*

14.—(1) Where a fund for live stock or any class thereof is established under the *Farm Products Payments Act*, the Lieutenant Governor in Council, in regulations made under that Act, may, for the purpose of that Act, Regulations under R.S.O. 1980, c. 159

(a) designate as producers any class or classes of persons engaged in selling such live stock or class thereof, as

owners or otherwise, and may limit the extent of any such designation;

(b) designate classes of dealers and producers and prescribe different fees payable by different classes to the board constituted to administer the fund, and require the payment of such fees;

R.S.O. 1980,
c. 41

(c) provide that the fees payable by any class or classes of producers or persons designated as producers to the board constituted to administer the fund may be collected in the same manner as licence fees fixed under clause 5 (1) (b) of the *Beef Cattle Marketing Act*; and

R.S.O. 1980,
c. 159

(d) exempt any class or classes of producers or persons designated as producers from the application of the *Farm Products Payments Act* or the regulations made under that Act, or any part thereof.

Power of
board to
borrow

(2) For the purposes of the fund mentioned in subsection (1), if, at any time the amount standing to the credit of the fund is insufficient for the purpose of making payments for claims under the *Farm Products Payments Act*, the board constituted to administer the fund may borrow such sums as are necessary to meet the deficit by loans from a chartered bank, loan company, trust company, credit union or other person.

Guarantee
of loans

(3) Upon the recommendation of the Minister, the Lieutenant Governor in Council may, upon such terms as the Lieutenant Governor in Council considers proper, guarantee the payment of any loan or loans or any part thereof, together with interest thereon, made to the board for the purposes of subsection (2).

Amount
guaranteed

(4) The aggregate of the principal sum or sums guaranteed under subsection (3) shall not exceed \$1,000,000 outstanding at any one time.

Application of
R.S.O. 1980,
c. 270,
s. 6 (2-6)

(5) Subsections 6 (2) to (6) of the *Ministry of Agriculture and Food Act* apply with necessary modifications to a guarantee given under subsection (3) of this section.

Non-
application of
s. 3 (3)

(6) Subsection 3 (3) of the *Beef Cattle Marketing Act* does not apply to fees imposed and collected under the *Farm Products Payments Act* and the regulations made thereunder. 1980, c. 5, s. 4, *part*.

Regulations

15.—(1) The Lieutenant Governor in Council may make regulations,

- (a) establishing and describing standards for the purpose of grading any live stock or live stock product ;
- (b) providing for the issue of grading certificates and prescribing the form thereof ;
- (c) prescribing the manner in which samples of any live stock product may be taken for inspection ;
- (d) providing for and prescribing the manner and conditions of grading, inspection, packing, branding and marking of any live stock or live stock product ;
- (e) prescribing the manner in and the conditions under which any live stock or live stock product shall be stored, transported, delivered, shipped, advertised, purchased, sold, offered or displayed for sale and the types, sizes, branding, marking and labelling of packages or containers in which any live stock or live stock product shall be contained ;
- (f) prescribing the manner in which the seller or shipper of ungraded live stock and live stock products shall identify, for purposes of grading, individual producer's lots in any shipment ;
- (g) prescribing the manner in which a receiver shall make returns and prepare for presentation to the seller or shipper the statements of account of purchase of any live stock or live stock product and for the investigation of such statements and the transactions represented thereby ;
- (h) prescribing the manner in which receipts, classifications, weights and purchase prices shall be recorded at assembling points and abattoirs and made available to the Minister ;
- (i) prescribing the grades of eggs that may be broken or dried in any egg-breaking plant ;
- (j) regulating the production and sale of poultry and of eggs for the production of poultry ;
- (k) classifying persons dealing in live stock or live stock products ;
- (l) providing for the manner of issuing licences and prescribing their duration and the fees payable therefor ;

- (m) prescribing the terms and conditions on which licences are issued;
- (n) providing grounds for refusal to issue or renew, suspension or revocation of licences in addition to the grounds mentioned in section 3 or 4, as the case may be;
- (o) prescribing forms and providing for their use;
- (p) requiring the furnishing of security or proof of financial responsibility by live stock dealers or dealers in live stock products or any class thereof and providing for the administration, forfeiture and disposition of any moneys or securities so furnished;
- (q) prescribing the manner in which, and the conditions under which, a live stock dealer or dealer in live stock products or any class thereof shall make payment for live stock or live stock products or any class thereof;
- (r) prescribing the books and records to be kept, returns to be made and information to be furnished by live stock dealers or dealers in live stock products or any class thereof, and the places at which such books and records shall be kept;
- (s) designating animals or poultry as live stock for the purposes of this Act;
- (t) designating animal or poultry products as live stock products for the purposes of this Act;
- (u) governing the seizure and detention of any live stock or live stock product by an inspector and prescribing the procedures therefor;
- (v) providing for the exemption from this Act or the regulations, or any provision thereof, of any person or class of persons. R.S.O. 1970, c. 251, s. 6 (1); 1980, c. 5, s. 5 (1).

Regulation
may be
limited

(2) Any regulation may be limited as to time and place.
R.S.O. 1970, c. 251, s. 6 (2).

Authority
to adopt
grades, etc.,
by reference
R.S.C. 1970,
c. A-8

(3) Any regulation may adopt by reference, in whole or in part with such changes as the Lieutenant Governor in Council considers necessary, any grade, standard or grade name established under the *Canada Agricultural Products Standards Act*, as amended or re-enacted from time to time, and may require compliance with any such grade, standard or grade name so adopted, including any such changes. 1980, c. 5, s. 5 (2).

16. Every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not less than \$25 and not more than \$100 for a first offence and to a fine of not less than \$50 and not more than \$1,000 for any subsequent offence. R.S.O. 1970, c. 251, s. 7.

CHAPTER 246

Live Stock Branding Act

1. In this Act,

Interpre-
tation

(a) “brand” means a letter, sign or numeral, or any combination of them, recorded as allotted;

(b) “livestock” means a horse, head of cattle, sheep or fowl;

(c) “Minister” means the Minister of Agriculture and Food;

(d) “Ministry” means the Ministry of Agriculture and Food. R.S.O. 1970, c. 252, s. 1; 1972, c. 1, s. 1.

2.—(1) No person shall brand any livestock except with a brand allotted by the Minister and to which he is entitled under this Act. Branding
of live
stock

(2) Every such brand shall be recorded as in this Act provided and the fees payable are those set out in the Schedule. Recording
brand

(3) A brand so allotted is not good for a longer period than three years, unless it is renewed by the owner. Renewal of
brand

(4) Any owner of a brand is entitled to transfer the ownership of it to any person upon applying to the Minister and complying with the requirements laid down by the Minister to effect the transfer. R.S.O. 1970, c. 252, s. 2. Transfer
of brand

3.—(1) Upon the recording in the books of the Ministry of any allotment or transfer of a brand, the person in whose name the brand is last recorded becomes the owner of the brand and of all the rights thereof and therein, and is entitled to a certificate of the allotment or transfer and of the recorded entry of the brand, and the production of the certificate is *prima facie* evidence of the ownership of the certificate without any further proof of the signature of the officer or other person signing the certificate. Certificate
of transfer

(2) In case any owner under this Act forfeits his right to ownership of a brand, the brand shall not be allotted to any person for a period of at least three years. R.S.O. 1970, c. 252, s. 3; 1972, c. 1, s. 1. Right to
ownership

Record of
all brands

4. The Live Stock Commissioner shall be the recorder of brands and shall receive applications, keep a record of all brands allotted and make transfers and cancellations in accordance with this Act. R.S.O. 1970, c. 252, s. 4.

List of
brands
may be
published

5. The Minister may cause to be published from time to time a complete list of the brands recorded under this Act. R.S.O. 1970, c. 252, s. 5.

Regulations

6. The Minister may make regulations prescribing forms and providing for their use and as are necessary for the better carrying out of the provisions of this Act. R.S.O. 1970, c. 252, s. 6.

Offences

7. Every person who,

- (a) improperly and wrongfully brands or causes to be branded any live stock with a brand that has been recorded as required by this Act or the regulations, and that has not been cancelled thereunder; or
- (b) brands or causes to be branded with his own brand any live stock of which he is not the owner without the authority of the owner; or
- (c) defaces, obliterates or otherwise renders illegible, or causes to be defaced, obliterated or otherwise rendered illegible any brand upon any live stock; or
- (d) brands or causes to be branded any live stock with an unrecorded brand,

is guilty of an offence and on conviction is liable to a fine of not more than \$200. R.S.O. 1970, c. 252, s. 7.

SCHEDULE

FEES

On application for allotment of a brand for a period of 3 years	\$1.00
On application for renewal of an allotment of a brand for a further period of 3 years	1.00
On application for change in the record of a brand50
On every transfer of a recorded brand50
For every search of a brand record50
For every certified extract from the brand recorded50

R.S.O. 1970, c. 252, Sched.

CHAPTER 247

Live Stock Community Sales Act

1. In this Act,

Interpre-
tation

- (a) "Board" means the Agricultural Licensing and Registration Review Board under the *Ministry of Agriculture and Food Act*; R.S.O. 1980, c. 270
- (b) "community sale" means a sale or offering for sale of live stock by public auction held at an established place of business where live stock is assembled for the purpose;
- (c) "Director" means the Director of the Veterinary Services Branch of the Ministry of Agriculture and Food;
- (d) "inspector" means an inspector appointed for the purposes of this Act;
- (e) "licence" means a licence under this Act;
- (f) "live stock" means cattle, goats, horses, sheep or swine, or the young thereof;
- (g) "Minister" means the Minister of Agriculture and Food;
- (h) "operator" means a person engaged in the business of operating community sales;
- (i) "premises" means the land, buildings and structures at the place of business of an operator;
- (j) "regulations" means the regulations made under this Act;
- (k) "veterinarian" means a person registered under the *Veterinarians Act*. R.S.O. 1970, c. 253, s. 1; 1971, c. 50, s. 53 (1); 1972, c. 1, s. 1; 1976, c. 46, s. 1; 1978, c. 100, s. 12 (1). R.S.O. 1980, c. 522

2. This Act does not apply to,

Where Act
does not
apply

- (a) a sale at a stock yard operated by the Ontario Stock Yards Board;

R.S.O. 1980,
c. 158

(b) a sale of live stock by a local board under the *Farm Products Marketing Act*;

(c) a sale of pure bred live stock that is or is of a class that is designated by the regulations;

R.S.O. 1980,
c. 91

(d) a sale of cattle by a co-operative corporation to which the *Co-operative Corporations Act* applies where,

(i) one of the objects of the corporation is to operate sales of cattle on a consignment basis,

(ii) at least three-quarters of the shareholders or members of the corporation are producers of cattle, and

(iii) the corporation operates not more than four sales in any calendar year; or

(e) a sale of live stock held at the established place of business of an operator where,

(i) the sale is held for the purpose of dispersing an established herd in whole or in part,

(ii) only live stock of the herd owner is offered for sale, and

(iii) the herd has not been assembled by a dealer in live stock for the purpose of resale.
R.S.O. 1970, c. 253, s. 2; 1973, c. 104, s. 1 (2);
1976, c. 46, s. 2.

Licence

3. No person shall engage in the business of operating community sales without a licence therefor from the Director.
R.S.O. 1970, c. 253, s. 3.

Issue of
licence

4.—(1) The Director shall issue a licence to a person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee unless, after a hearing, he is of opinion that,

(a) the applicant or, where the applicant is a corporation, its officers or directors, is or are not competent to engage in the business of operating community sales;

(b) having regard to the applicant's financial position, the applicant cannot reasonably be expected to be

financially responsible in the conduct of the business of operating community sales ;

- (c) the past conduct of the applicant or, where the applicant is a corporation, of its officers or directors, affords reasonable grounds for belief that the business of operating community sales pursuant to the licence will not be carried on in accordance with law and with honesty and integrity ;
- (d) the applicant does not possess or will not have available all premises, facilities and equipment necessary to engage in the business of operating community sales in accordance with this Act and the regulations ; or
- (e) the applicant is not in a position to observe or carry out the provisions of this Act and the regulations.

(2) Subject to section 5, the Director shall renew a licence ^{Renewal} on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee. 1971, c. 50, s. 53 (2), *part*.

5.—(1) The Director may refuse to renew or may suspend ^{Refusal to renew, suspension and} or revoke a licence if, after a hearing, he is of opinion ^{revocation} that,

- (a) the licensee is not or has not been financially responsible in the conduct of the business of operating community sales pursuant to the licence ;
- (b) the premises, facilities and equipment used in the business of operating community sales pursuant to the licence do not comply with this Act and the regulations ;
- (c) there are reasonable grounds for belief that the business of operating community sales pursuant to the licence is not carried on in accordance with honesty and integrity ;
- (d) the licensee or, where the licensee is a corporation, any officer, director or servant thereof has contravened or has permitted any person under his control or direction in connection with his business of operating community sales to contravene any provision of this Act or the regulations or of any other Act or the regulations thereunder or of any

law applying to the carrying on of the business of operating community sales and such contravention warrants such refusal to renew, suspension or revocation of the licence; or

- (e) any other ground for refusal to renew, suspension or revocation specified in the regulations exists.

Provisional
suspension,
etc.

(2) Notwithstanding subsection (1), the Director, by notice to a licensee and without a hearing, may provisionally refuse to renew or may suspend the licensee's licence where in the Director's opinion it is necessary to do so for the immediate protection of the safety or health of any person or animal or of the interests of persons consigning animals for sale to the licensee and the Director so states in such notice giving his reasons therefor, and thereafter the Director shall hold a hearing to determine whether renewal of the licence should be refused or whether the licence should be further suspended or revoked under this Act or the regulations.

Continuation
of licence
pending
renewal

(3) Subject to subsection (2), where within the time prescribed therefor or, if no time is prescribed, before expiry of his licence, a licensee has applied for a renewal of his licence and paid the prescribed fee and observed or carried out the provisions of this Act and the regulations, his existing licence shall be deemed to continue until he has received the decision of the Director on his application for renewal. 1971, c. 50, s. 53 (2), *part.*

Notice of
hearing

6.—(1) The notice of a hearing by the Director under section 4 or 5 shall afford the applicant or licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence.

Examination
of docu-
mentary
evidence

(2) An applicant or licensee who is a party to proceedings in which the Director holds a hearing shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. 1971, c. 50, s. 53 (2), *part.*

Variation
of decision
by Director

7. Where the Director has refused to issue or renew or has suspended or revoked a licence pursuant to a hearing he may, at any time of his own motion or on the application of the person who was the applicant or licensee, vary or rescind his decision, but the Director shall not vary or rescind his decision adversely to the interests of any person without holding a rehearing to which such person is a party and may make

such decision pursuant to such rehearing as he considers proper under this Act and the regulations. 1971, c. 50, s. 53 (2), *part*.

8.—(1) Where the Director refuses to issue or renew or ^{Appeal to Board} suspends or revokes a licence, the applicant or licensee may, by written notice delivered to the Director and filed with the Board within fifteen days after receipt of the decision of the Director, appeal to the Board.

(2) The Board may extend the time for the giving of ^{Extension of time for appeal} notice by an applicant or licensee under subsection (1), either before or after expiration of such time, where it is satisfied that there are *prima facie* grounds for appeal and that there are reasonable grounds for applying for the extension.

(3) Where an applicant or licensee appeals to the Board ^{Powers of Board} under this section, the Board shall hear the appeal by way of a hearing *de novo* to determine whether the licence should be issued, renewed, suspended or revoked and may after the hearing confirm or alter the decision of the Director or direct the Director to do any act he is authorized to do under this Act and the regulations and as the Board considers proper and, for such purpose, the Board may substitute its opinion for that of the Director.

(4) Notwithstanding that an applicant or licensee has ^{Effect of decision pending disposal of appeal} appealed under this section from a decision of the Director, unless the Director otherwise directs, the decision of the Director is effective until the appeal is disposed of. 1971, c. 50, s. 53 (2), *part*.

9.—(1) The Director, the appellant and such other persons ^{Parties} as the Board may specify are parties to the proceedings before the Board under this Act.

(2) Members of the Board assigned to render a decision after ^{Members making decision not to have taken part in investigation, etc.} a hearing shall not have taken part prior to the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but such members may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Recording
of evidence

(3) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Findings
of fact

R.S.O. 1980,
c. 484

(4) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

Only
members
at hearing
to participate
in decision

(5) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision. 1971, c. 50, s. 53 (2), *part*.

Appeal to
court

10.—(1) Any party to the hearing before the Board may appeal from the decision of the Board to the Divisional Court in accordance with the rules of court.

Minister
entitled to
be heard

(2) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

Record to
be filed
in court

(3) The chairman of the Board shall file with the Registrar of the Supreme Court the record of the proceedings before the Board which, together with a transcript of the evidence before the Board if it is not part of the Board's record, shall constitute the record in the appeal.

Powers of
court on
appeal

(4) An appeal under this section may be made on any question that is not a question of fact alone and the court may confirm or alter the decision of the Board or direct the Director to do any act he is authorized to do under this Act or may refer the matter back to the Board for reconsideration by the Board as the court considers proper and the court may substitute its opinion for that of the Director or the Board.

Effect of
decision of
Board
pending
disposal of
appeal

(5) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Board, unless the Board otherwise directs, the decision of the Board is effective until the appeal is disposed of. 1971, c. 50, s. 53 (2), *part*.

Conditions
of licence

11. Every licence is subject to the conditions that the operator,

(a) maintains the security required by the regulations;

- (b) is in possession of premises that have at least one building for the stabling of the live stock that is assembled for the purpose of sale; and
- (c) complies with this Act and the regulations and any other condition that is imposed by the regulations. R.S.O. 1970, c. 253, s. 4.

12. No operator shall hold a community sale unless,

Require-
ments for
premises

- (a) every building in which live stock is kept is subdivided into areas so that each class of live stock may be kept separately and so that the live stock that is designated for sale for purposes other than slaughter may be kept separate from the live stock that is designated for sale for slaughter;
- (b) facilities for watering live stock are provided in each separate area in which live stock is kept;
- (c) every floor of every building used for keeping live stock and every passageway over which live stock passes has a reasonable smooth and impermeable surface;
- (d) every wall, partition, barrier, fence, manger, trough and other structure or part thereof with which live stock may come into contact is free from sharp projections and obstructions that may injure live stock;
- (e) a room is provided in a convenient location for the use of an inspector as an office and as a laboratory equipped with such facilities as are required by him in the course of his duties under this Act and the regulations; and
- (f) a set of scales with a weighing capacity of at least 1,361 kilograms is installed and maintained in good operating condition. R.S.O. 1970, c. 253, s. 5; 1976, c. 46, s. 3; 1978, c. 87, s. 8.

13. No operator shall assemble live stock for a community sale in greater numbers than may be kept, fed, watered and otherwise cared for on the premises without overcrowding or risk of injury. R.S.O. 1970, c. 253, s. 6.

Number of
live stock
on premises

14.—(1) No operator shall commence a community sale until an inspector,

Conditions
precedent
to sale

- (a) has inspected the premises at which the sale is to be held; and
- (b) has carried out such duties as are prescribed in the regulations to be completed before the commencement of a community sale.

Idem

(2) No operator shall offer live stock for sale at a community sale unless such live stock has been inspected on the premises by an inspector before being offered for sale. 1976, c. 46, s. 5.

Cleaning of
premises
before sale

15. Every operator shall, at least twelve hours before any live stock is received on his premises for the purpose of a community sale, clean and disinfect the premises in such manner as the regulations prescribe. R.S.O. 1970, c. 253, s. 9.

Records

16. Every operator shall keep for at least twelve months after each community sale a record of the sale showing,

- (a) the names and addresses of the sellers and buyers of the live stock;
- (b) the dates of arrival at and departure from his premises of the live stock;
- (c) an identification or description of the live stock;
- (d) the sale price of the live stock; and
- (e) where the live stock is sold by weight, the weight thereof. R.S.O. 1970, c. 253, s. 10.

Inspectors

17.—(1) The Minister shall appoint a chief inspector who is a veterinarian and such other inspectors as he considers necessary and, notwithstanding any other Act, such inspectors have exclusive authority to initiate proceedings to enforce the provisions of this Act and the regulations.

Certificate
of
appointment

(2) The production by an inspector of a certificate of his appointment purporting to be signed by the Minister is admissible in evidence as *prima facie* proof of his appointment without further proof of the signature or authority of the Minister.

Powers of
inspector

(3) Subject to subsections (4), (5) and (6), the Director or an inspector may, for the purpose of carrying out his duties under this Act,

(a) enter any premises and any truck or other conveyance thereon and inspect the premises, truck or other conveyance and any live stock therein;

(b) require the production or furnishing by the owner or custodian thereof of any books, records or documents, or of extracts therefrom, of persons licensed under this Act or relating to any live stock assembled or sold at a community sale;

(c) in accordance with the regulations, seize, remove, detain and provide for the disposal of any live stock where,

(i) he believes on reasonable and probable grounds that there is a contravention of this Act or the regulations in respect thereof, or

(ii) it appears to him that the live stock is diseased, injured or shows evidence of any other abnormal condition;

(d) order live stock mentioned in subclause (c) (ii) to be destroyed,

(i) with the consent of the owner, or

(ii) where a veterinarian has examined the live stock and has advised the Director or inspector in writing that the live stock is diseased, injured or suffers from any other abnormal condition and, in his opinion, is incapable of being so cured, healed or treated as to live thereafter without suffering.

(4) Except under the authority of a warrant under section 142 of the *Provincial Offences Act*, the Director or an inspector shall not enter any part of a dwelling without the consent of the occupant.

No entry without consent or warrant
R.S.O. 1980,
c. 400

(5) Where the Director or an inspector requires the production or furnishing of books, records, documents or extracts therefrom, the person having custody thereof shall produce or furnish them to the Director or inspector and the Director or inspector may detain them for the purpose of making copies therefrom and thereafter return them to the person who produced or furnished them.

Production of records, etc.

(6) Where a copy of a book, record, document or extract is made under subsection (5) and is certified by a person there-

Certification of copy

unto authorized, it is admissible in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way. 1976, c. 46, s. 6.

Obstruction

18. No person shall hinder or obstruct the Director or an inspector in the course of his duties, or refuse to permit him to inspect any premises or any truck or other conveyance thereon or any live stock therein, or furnish him with false information, or refuse to furnish him with information. 1976, c. 46, s. 7.

Offence

19. Every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction is liable for a first offence to a fine of not more than \$500 and for a second or subsequent offence to a fine of not more than \$1,000. R.S.O. 1970, c. 253, s. 13; 1976, c. 46, s. 8.

Regulations

20. The Lieutenant Governor in Council may make regulations,

- (a) establishing classes of community sales and limiting the application of any regulation to any such class;
- (b) providing for the issue, renewal, refusal to grant or renew, suspension and revocation of licences;
- (c) prescribing grounds for the refusal to renew, suspension or revocation of licences in addition to those grounds mentioned in clauses 5 (1) (a), (b), (c) and (d);
- (d) designating sales or classes of sales of pure bred live stock for the purpose of clause 2 (c);
- (e) prescribing additional conditions to those mentioned in section 11;
- (f) prescribing the fee payable for a licence and for the renewal thereof;
- (g) requiring the bonding of operators and prescribing the amount and form of such bonds, the classes of securities that are acceptable as collateral security, the period that bonds shall subsist, the condition upon which bonds may be forfeited, and respecting all matters subsequent to forfeiture;
- (h) prescribing the powers and duties of inspectors or any class thereof;

- (i) respecting the times of delivery of live stock to premises and the hours for holding community sales;
- (j) respecting the conditions under which live stock shall be assembled or offered for sale at community sales;
- (k) prescribing the manner in which premises shall be cleaned and disinfected;
- (l) designating diseases and providing for the disposal of live stock found infected with any such disease;
- (m) prescribing forms and providing for their use;
- (n) governing the seizure, removal, detention and disposal of live stock for the purposes of clause 17 (3) (c);
- (o) governing the destruction of live stock for the purposes of clause 17 (3) (d);
- (p) prescribing standards for the health, welfare and care of live stock, or any class thereof, in connection with community sales;
- (q) prohibiting the sale of live stock affected with any disease or other abnormal condition and providing for the disposal of such live stock;
- (r) prescribing the terms and conditions upon which live stock affected with any disease or other abnormal condition may be offered for sale and sold;
- (s) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 253, s. 14; 1971, c. 50, s. 53 (4); 1976, c. 46, s. 9.

CHAPTER 248

Live Stock Medicines Act

1. In this Act,

Interpre-
tation

- (a) "Board" means the Agricultural Licensing and Registration Review Board under the *Ministry of Agriculture and Food Act*; R.S.O. 1980,
c. 270
- (b) "Committee" means The Live Stock Medicines Advisory Committee;
- (c) "Director" means the Director of the Veterinary Services Branch of the Ministry of Agriculture and Food;
- (d) "drug" means a drug as defined in section 113 of the *Health Disciplines Act*; R.S.O. 1980,
c. 196
- (e) "inspector" means an inspector appointed under this Act;
- (f) "licence" means a licence under this Act;
- (g) "live stock" means cattle, goats, horses, poultry, rabbits, sheep and swine and animals maintained in captivity for the production of fur;
- (h) "live stock medicine" means a drug or class of drugs designated as a live stock medicine in the regulations;
- (i) "Minister" means the Minister of Agriculture and Food;
- (j) "owner" includes a person employed by or authorized to act on behalf of an owner;
- (k) "regulations" means the regulations made under this Act;
- (l) "sell" includes offer for sale, expose for sale, have in possession for sale, sell or distribute;
- (m) "veterinarian" means a veterinarian registered under the *Veterinarians Act*. 1973, c. 80, s. 1; 1978, c. 100, s. 13 (1). R.S.O. 1980,
c. 522

**Live Stock
Medicines
Advisory
Committee**

2.—(1) There shall be a committee to be known as The Live Stock Medicines Advisory Committee appointed by the Lieutenant Governor in Council and consisting of,

- (a) one member representing the Veterinary Services Branch of the Ministry of Agriculture and Food;
- (b) one member representing the Ministry of Health;
- (c) one member representing the Health Protection Branch of the Department of National Health and Welfare (Canada);
- (d) one member representing the Ontario College of Pharmacy;
- (e) one member representing the Ontario Veterinary Association;
- (f) one member representing the Ontario Division of The Canadian Feed Manufacturers Association;
- (g) one member representing The Ontario Fur Breeders Association, Incorporated;
- (h) one member representing poultry producers;
- (i) two members representing owners of live stock other than poultry; and
- (j) such other members as the Minister considers necessary or advisable.

**Chairman
and vice-
chairman**

(2) The Lieutenant Governor in Council shall appoint from the persons appointed under subsection (1) a chairman and a vice-chairman of the Committee.

**Remuner-
ation**

(3) The members of the Committee, other than members employed in the public service of Ontario or Canada, may receive such remuneration and expenses as the Lieutenant Governor in Council determines.

Functions

(4) The Committee shall,

- (a) review all legislation and regulations pertaining to live stock medicines;
- (b) inquire into and report to the Minister on any matter referred to it by the Minister;

(c) advise the Minister on matters relating to the control and regulation of live stock medicines;

(d) evaluate and recommend,

(i) procedures relating to the sale of live stock medicines, and

(ii) proper standards for the maintenance, handling and storage of live stock medicines; and

(e) make recommendations respecting,

(i) the designation of drugs or classes of drugs as live stock medicines, and

(ii) the designation of live stock medicines for sale under a licence or any class of licence.
1973, c. 80, s. 2.

3.—(1) The Minister may appoint a chief inspector who ^{Inspectors} shall be a veterinarian and such other inspectors as he considers necessary to carry out and enforce this Act and the regulations.

(2) The production by an inspector of a certificate of his <sup>Certifi-
cate of
appointment</sup> appointment purporting to be signed by the Minister is admissible in evidence as *prima facie* proof of his appointment without further proof of the signature and authority of the Minister.

(3) Subject to subsections (6), (7), (8) and (9), an inspector may, ^{Inspections} at any reasonable time, enter any premises or conveyance of a person licensed under this Act and make an inspection to ensure that the provisions of this Act and the regulations are being complied with.

(4) Where an inspector has reasonable and probable grounds ^{Idem} to believe that any person is selling live stock medicines to owners of live stock for the treatment of live stock without a licence under this Act and is not so authorized under any other Act, he may, subject to subsections (6), (7), (8) and (9) and at any reasonable time, enter any premises or conveyance of such person to make an inspection for the purpose of determining whether or not the person is committing an offence under this Act.

(5) Upon an inspection under subsection (3) or (4), an inspector <sup>Powers of
inspectors</sup> may,

- (a) require the production or furnishing by the owner or custodian thereof of any books, records, documents or extracts therefrom of the person being inspected;
- (b) obtain and remove a sample of any substance for the purpose of analysis to determine whether or not it is a live stock medicine; or
- (c) seize, remove or detain at the risk and expense of the owner any live stock medicine where he believes on reasonable and probable grounds that,
 - (i) the licensee is contravening the provisions of this Act or the regulations relating to the live stock medicine, or
 - (ii) the person being inspected is not authorized under this Act or any other Act to sell live stock medicines to owners of live stock for the treatment of live stock.

Entry of
dwellings
R.S.O. 1980,
c. 400

(6) Except under the authority of a warrant under section 142 of the *Provincial Offences Act*, an inspector shall not enter any part of a dwelling without the consent of the occupant unless,

- (a) the occupant is licensed under this Act; and
- (b) he has reasonable grounds for believing that the occupant is using such part for the sale, maintenance, handling or storage of live stock medicines.

Production
of appoint-
ment

(7) An inspector in the course of his duties under this section shall, upon request, produce the certificate of his appointment.

Removal for
copying

(8) An inspector who requires the production or furnishing of books, records, documents or extracts therefrom, may, upon giving a receipt therefor, remove and detain them for the purpose of making, or causing to be made, one or more copies thereof, but such copies shall be made with reasonable despatch, and the inspector shall forthwith thereafter return them to the person who produced or furnished them.

Copy as
evidence

(9) Any copy made under subsection (8), and certified by the inspector to be a true copy is admissible in evidence and has the same probative force as the original document would have had if it had been proven in the ordinary way.

(10) No person shall hinder or obstruct an inspector in the course of his duties or furnish him with false information or refuse to furnish him with information. 1973, c. 80, s. 3. Obstruction of inspector

4.—(1) Notwithstanding Part VI of the *Health Disciplines Act*, a person licensed under this Act may sell to owners of live stock for the treatment of live stock any live stock medicine designated in the regulations for the licence or class of licence held by such person. Licences
R.S.O. 1980,
c. 196

(2) Any person who sells a live stock medicine to an owner of live stock for the treatment of live stock without a licence under this Act is, unless authorized therefor by any other Act, guilty of an offence under this Act and on conviction is liable for a first offence to a fine of not more than \$1,000 or to imprisonment for a term of not more than three months, or to both, and for a subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both. 1973, c. 80, s. 4. Offence

5.—(1) The Director shall issue a licence to sell live stock medicines to owners of live stock for the treatment of live stock to a person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee unless, after a hearing, he is of opinion that, Issuance of licences

(a) the applicant or, where the applicant is a corporation, its officers or directors, is or are not competent to carry on the business;

(b) the past conduct of the applicant or, where the applicant is a corporation, of its officers or directors, affords reasonable ground for belief that the business will not be carried on in accordance with law;

(c) the applicant does not possess or will not have available all premises, facilities and equipment necessary to carry on the business in accordance with this Act and the regulations; or

(d) the applicant is not in a position to observe or carry out the provisions of this Act and the regulations.

(2) Subject to section 6, the Director shall renew a licence on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee. 1973, c. 80, s. 5. Renewal of licences

6.—(1) The Director may refuse to renew or may suspend or revoke a licence if, after a hearing, he is of opinion that, Refusal or revocation

- (a) the premises, facilities and equipment used in the business do not comply with this Act and the regulations;
- (b) the licensee or, where the licensee is a corporation, any officer, director or servant thereof has contravened, or has permitted any person under his control or direction in connection with the business to contravene, any provision of this Act or the regulations or of any other Act or the regulations thereunder or of any law applying to the carrying on of such business or the conditions for licensing, and such contravention warrants such refusal to renew, suspension or revocation of the licence;
- (c) any other ground for refusal to renew, suspension or revocation specified in the regulations exists; or
- (d) any ground for refusing to issue a licence under subsection 5 (1) exists.

Refusal or
suspension
pending
hearing

(2) Notwithstanding subsection (1), the Director, by notice to a licensee and without a hearing, may provisionally refuse to renew or suspend the licensee's licence where in the Director's opinion it is necessary to do so for the immediate protection of the safety or health of persons or live stock and the Director so states in such notice giving his reasons therefor, and thereafter the Director shall hold a hearing to determine whether renewal of the licence should be refused or whether the licence should be further suspended or revoked under this Act and the regulations.

Continuation
pending
renewal

(3) Subject to subsection (2), where within the time prescribed therefor or, if no time is prescribed, before expiry of his licence, a licensee has applied for a renewal of his licence and paid the prescribed fee and observed or carried out the provisions of this Act and the regulations, his existing licence shall be deemed to continue until he has received the decision of the Director on his application for renewal. 1973, c. 80, s. 6.

Opportunity
for
compliance

7.—(1) The notice of a hearing by the Director under section 5 or 6 shall afford the applicant or licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence.

Examination
of docu-
mentary
evidence

(2) An applicant or licensee who is a party to proceedings in which the Director holds a hearing shall be afforded

an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. 1973, c. 80, s. 7.

8. Where the Director has refused to issue or renew or has suspended or revoked a licence pursuant to a hearing he may at any time, of his own motion or on the application of the person who was the applicant or licensee, vary or rescind his decision but the Director shall not vary or rescind his decision adversely to the interests of any person without holding a rehearing to which such person is a party and may make such decision pursuant to such rehearing as he considers proper under this Act and the regulations. 1973, c. 80, s. 8.

Variation or
rescission
of decision
by Director

9.—(1) Where the Director refuses to issue or renew or suspends or revokes a licence, the applicant or licensee may by written notice delivered to the Director and filed with the Board within fifteen days after receipt of the decision of the Director appeal to the Board.

Notice of
appeal

(2) The Board may extend the time for the giving of notice by an applicant or licensee under subsection (1), either before or after expiration of such time, where it is satisfied that there are *prima facie* grounds for appeal and that there are reasonable grounds for applying for the extension.

Extension of
time for
appeal

(3) Where an applicant or licensee appeals to the Board under this section, the Board shall hear the appeal by way of a hearing *de novo* to determine whether the licence should be issued, renewed, suspended or revoked and may after the hearing confirm or alter the decision of the Director or direct the Director to do any act he is authorized to do under this Act and the regulations and as the Board considers proper and, for such purpose, the Board may substitute its opinion for that of the Director.

Hearing

(4) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Director, unless the Director otherwise directs, the decision of the Director is effective until the appeal is disposed of. 1973, c. 80, s. 10.

Stay pending
appeal

10.—(1) The Director, the appellant and such other persons as the Board may specify are parties to the proceedings before the Board under this Act.

Parties

Members
not to have
taken part
in investiga-
tion

(2) Members of the Board assigned to render a decision after a hearing shall not have taken part prior to the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but such members may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Recording
of evidence

(3) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Evidence

(4) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

R.S.O. 1980,
c. 484

Only
members at
hearing
to partici-
pate in
decision

(5) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision. 1973, c. 80, s. 11.

Appeal to
Divisional
Court

11.—(1) Any party to the hearing before the Board may appeal from the decision of the Board to the Divisional Court in accordance with the rules of court.

Minister
entitled to
be heard

(2) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

Certifi-
cation of
record

(3) The chairman of the Board shall file with the Registrar of the Supreme Court the record of the proceedings before the Board.

Powers of
court on
appeal

(4) An appeal under this section may be made on any question that is not a question of fact alone and the court may confirm or alter the decision of the Board or direct the Director to do any act he is authorized to do under this Act or may refer the matter back to the Board for reconsideration by the Board as the court considers proper and the court may substitute its opinion for that of the Director or the Board.

Stay on
appeal

(5) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Board,

unless the Board otherwise directs, the decision of the Board is effective until the appeal is disposed of. 1973, c. 80, s. 12.

12. Subject to subsection 4 (2), every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction is liable for a first offence to a fine of not more than \$500, and for a subsequent offence to a fine of not more than \$1,000 or to imprisonment for a term of not more than three months, or to both. 1973, c. 80, s. 13.

13. In any proceeding or prosecution under this Act,

Evidence

- (a) where any container is labelled as containing a live stock medicine, it is admissible in evidence as *prima facie* proof that the container contains the live stock medicine described on the label; and
- (b) where any live stock medicine is found in a shop or place in which business is transacted, the live stock medicine is admissible in evidence as *prima facie* proof that it was kept for sale. 1973, c. 80, s. 14.

14. The Lieutenant Governor in Council may make regulations,

Regulations

- (a) designating drugs or classes of drugs as live stock medicines for the purposes of this Act;
- (b) providing for the manner of issuing licences and prescribing their duration and the fees payable therefor;
- (c) establishing classes of licences and designating the live stock medicines that may be sold under each class of licence;
- (d) prescribing the terms and conditions on which licences or any class thereof are issued;
- (e) prescribing grounds for refusal to renew, suspension or revocation of licences or any class thereof in addition to the grounds mentioned in section 6;
- (f) prescribing the terms and conditions under which live stock medicines shall be sold by persons licensed under this Act;
- (g) prescribing the facilities and equipment to be provided for the maintenance, handling and storage

of live stock medicines by persons licensed under this Act;

- (h) prescribing the books and records to be kept, returns to be made and information to be furnished with respect to the purchase and sale of live stock medicines;
- (i) prescribing forms and providing for their use;
- (j) governing advertising in respect of live stock medicines and the furnishing of information to the public by persons licensed under this Act;
- (k) governing the seizure, removal, detention and disposal of live stock medicines for the purposes of clause 3 (5) (c);
- (l) providing for the removal and disposal of live stock medicines in the possession of an applicant or licensee where a licence is refused, suspended or revoked;
- (m) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1973, c. 80, s. 15.

Moneys

15. The moneys required for the purposes of this Act shall be paid out of the moneys appropriated therefor by the Legislature. 1973, c. 80, s. 16, *revised*.

CHAPTER 249

Loan and Trust Corporations Act

1. In this Act,

Interpre-
tation

- (a) “accountant” means a person who is a member of The Canadian Institute of Chartered Accountants or any other person who is an accountant and who, in either case, is acceptable to the Registrar as being competent to audit the accounts and transactions of corporations under this Act and includes a partnership of which the members are accountants;
- (b) “chief agency” means the principal office or place of business in Ontario of a corporation that has its head office out of Ontario;
- (c) “corporation” means a loan corporation or a trust company;
- (d) “due application” includes the furnishing of information, evidence and material required by the Registrar, and the payment of the prescribed fees in respect of any application, certificate or document required or issued under this Act, and also the payment to the Minister of Revenue of all taxes due and payable by the applicant company under any Act;
- (e) “extra-provincial corporation” means a corporation that was not incorporated under the law of Ontario;
- (f) “head office” means the place where the chief executive officers of the corporation transact its business;
- (g) “law of Ontario” includes any law of the former Province of Canada or of Upper Canada, continued as the law of Ontario, or consolidated or incorporated with the law of Ontario;
- (h) “loan corporation” means an incorporated company, association or society, constituted, authorized or operated for the purpose of accepting deposits or issuing debentures, notes and like obligations and of lending money on the security of real estate or investing money in mortgages, charges or hypothecs

R.S.O. 1980,
cc. 102, 221

upon real estate or for those and any other purposes, but does not include a chartered bank, an insurance corporation, a trust company, a credit union incorporated under the *Credit Unions and Caisses Populaires Act*, a company referred to in clause 180 (f) or clause 183 (g) and that is controlled by a loan corporation or a trust corporation in accordance with the regulations, or an investment company registered under the *Investment Contracts Act*;

- (i) “Minister” means the member of the Executive Council under whose direction this Act is administered;
- (j) “paid in”, as applied to the capital stock of a corporation or to any of its shares, means the amount paid to it on its shares, not including the premium, if any, paid on such shares, whether such shares are or are not fully paid up;
- (k) “provincial corporation” means a corporation incorporated under the law of Ontario;
- (l) “provincial trust company” means a trust company that is a provincial corporation;
- (m) “real estate” includes messuages, lands, rents and hereditaments, whether freehold or of any other tenure, and whether corporeal or incorporeal, and leasehold estates, and any undivided share thereof, and any estate, right or interest therein;
- (n) “registered corporation” means a corporation registered under this Act;
- (o) “Registrar” means the Registrar appointed under this Act;
- (p) “subordinated note” means an instrument evidencing an indebtedness of a corporation that by its terms provides that the indebtedness evidenced by it shall, in the event of the insolvency or winding-up of the corporation, rank equally with the indebtedness evidenced by other subordinated notes of the corporation but be subordinate in right of payment to all other indebtedness of the corporation;
- (q) “trust company” means a company constituted or operated for the purpose of acting as trustee, bailee, agent, executor, administrator, receiver, liquidator,

assignee, guardian of a minor's estate, or committee of a mentally incompetent person's estate. R.S.O. 1970, c. 254, s. 1; 1972, c. 101, s. 1; 1973, c. 128, s. 1; 1974, c. 88, s. 1.

2.—(1) This Act applies, according to its context, to every corporation within the meaning of this Act. Application
of Act

(2) With respect to every provincial corporation, whether formed or incorporated before or after the passing of this Act and whether formed or incorporated by or under a special or general Act or by letters patent or otherwise, any provision of the Act or letters patent or other instrument of incorporation that is inconsistent or in conflict with the provisions of this Act does not apply. R.S.O. 1970, c. 254, s. 2 (1, 2). Idem

(3) Sections 4 to 90, except sections 52 and 69, and sections 98 to 102, and sections 123, 126, 127, 128, 186, 191 and 193 apply only to provincial corporations. 1972, c. 101, s. 2, *part*; 1973, c. 128, s. 2. Idem

(4) Sections 91 to 97 apply only to registered corporations having their head office in Ontario. Idem

(5) Sections 155, 156, 166, 184, 185, 194 and 195 and sections 198 to 200 and section 203 apply only to registered corporations. 1972, c. 101, s. 2, *part*. Idem

3. This Act does not apply to,

Non-
application
of Act

(a) an incorporated company that is authorized, constituted or operated for the purpose of lending money on the security of real estate or investing money in mortgages, charges or hypothecs upon real estate that does not accept deposits, and borrows only by way of,

(i) loans from chartered banks in the usual course of business, or

(ii) the issue of debentures, notes or like obligations of an amount not less than \$100,000 each to any one person on his account, whereby the company is not obligated, or by demand of the holder cannot be obligated, to repay the money secured by such a debenture, note or like obligation within five years from the date of the issue of the said debenture, note or like obligation;

- (b) an incorporated company whose objects do not provide for the lending of money on the security of real estate or leaseholds or the investing of its funds in mortgages or hypothecs on real estate or leaseholds and that acquires the bonds, debentures, debenture stock or other securities of a company that are collaterally secured wholly or in part by a mortgage or hypothec upon real estate or leaseholds. 1974, c. 88, s. 2.

INCORPORATION OF LOAN CORPORATIONS
AND TRUST COMPANIES

Application
for incor-
poration

4.—(1) An application for the incorporation of a loan corporation or a trust company shall be made by petition to the Lieutenant Governor in Council through the Minister in the prescribed form, and shall be delivered to the Registrar.

Notice of
application

(2) The applicants shall for one month next before filing their application with the Registrar publish a notice thereof in *The Ontario Gazette*, and shall also before such filing give a like notice at least once in a newspaper published in the locality in which the head office is to be established.

Contents

(3) The notice shall state the proposed corporate name, the location of the head office, which shall be in Ontario, the purposes of the corporation, and for what amount of permanent capital stock authorization will be asked, with the number of shares and the par value of the shares.

Further
information

(4) The applicants shall furnish such further information as is required by the Minister or the Registrar. R.S.O. 1970, c. 254, s. 3 (1-4).

Application
to be accom-
panied by a
declaration

(5) The application shall be accompanied by the original, or one of the duplicate originals, of a declaration adopted at a general meeting of the promoters, and executed under their respective hands and seals by at least five persons present at the meeting who are subscribers for shares. R.S.O. 1970, c. 254, s. 3 (5); 1974, c. 88, s. 3.

Contents
of declara-
tion

(6) The declaration shall set out the names in full and the address and calling of each of the declarants and shall declare that the declarants assembled at.....
on.....(*naming the place and time*);
.....being chairman, and
.....being secretary of the meeting (*naming them*) did there and then agree to constitute themselves a provisional corporation by the name of (*mentioning the proposed corporate name*) under the *Loan and Trust Corporations Act*

and under the proposed by-laws there and then adopted, and annexed to the declaration, also that the five persons (*naming them*) were elected provisional directors.

(7) The Minister may refer the application or any question arising thereunder to the Registrar for a report, and the Registrar shall report thereon. R.S.O. 1970, c. 254, s. 3 (6, 7).

Reference to
Registrar

5.—(1) Three copies of the proposed by-laws shall accompany the declaration, one copy duly certified being annexed thereto.

By-laws to
accompany
declaration

(2) Subject to this Act, the by-laws shall,

What they
shall provide
for

(a) provide for the proposed corporate name, and the location of the head office of the corporation;

(b) set out the purposes for which the corporation is to be constituted;

(c) state the capital of the corporation, the classes, if any, into which it is to be divided, the number of shares of each class and the par value of each share, and where more than one class of shares is provided for, one class shall be common shares designated as such, and the other class or classes shall be preference shares designated as such;

(d) in the case of preference shares, provide for the preferences, rights, conditions, restrictions, limitations or prohibitions attaching thereto including, without limiting the nature thereof, the right of the corporation to purchase for cancellation or at its option to redeem all or part of the preference shares of any class, or provide for conditions, restrictions, limitations or prohibitions on the right to vote;

(e) in the case of a loan corporation, define and regulate the exercise of such general powers of borrowing as are by this Act conferred upon loan corporations and declare within what limits such borrowing powers are to be exercised, and whether by issuing debentures or otherwise;

(f) provide for the holding of general meetings of the shareholders;

(g) provide for the election of directors, prescribe their number, powers, duties, and term of office, and the number necessary to constitute a quorum;

(h) provide that security in amounts satisfactory to the board of directors is to be taken for the fidelity of the person or persons having custody or control of the funds of the corporation; and

(i) provide for amendment of the by-laws by the shareholders in general meeting. R.S.O. 1970, c. 254, s. 4.

Stock
subscription

6. A sworn copy of the stock subscription shall also be filed with the Registrar containing such particulars as he may require. R.S.O. 1970, c. 254, s. 5.

Minister
may direct
amendment
of by-laws

7. If, on receiving an application for incorporation, the Minister finds in the by-laws anything repugnant to this Act or to the law of Ontario, he may direct an amendment of the by-laws, and, upon their being amended as directed and returned certified as having been so amended, the application may be proceeded with. R.S.O. 1970, c. 254, s. 6.

First
by-laws of
corporation

8. The by-laws accompanying the declaration mentioned in section 4, with such amendments as have been required by the Minister, are the first by-laws of the corporation and take effect on the date of the incorporation. R.S.O. 1970, c. 254, s. 7.

Affidavit
as to
subscription
and
payment

9.—(1) For the purpose of incorporation, the applicants shall file with the Registrar an affidavit showing that at least \$1,000,000 of stock has been subscribed for and taken up *bona fide* by at least five responsible subscribers, that each of the applicants holds in his own name and for his own use shares of an aggregate par value of at least \$1,000 and has paid in cash all calls due thereon and all liabilities incurred by him to the corporation, that at least \$1,000,000 of such subscribed stock has been paid in cash by the subscribers into a branch in Ontario of a chartered bank, in trust for the proposed corporation, free from all liability on the part of the proposed corporation or any of the subscribers to make repayment of the same or any part thereof to any person, firm or corporation and that each subscriber has, out of his own money, contributed to the amount so paid in rateably according to the amount of shares subscribed for by him. R.S.O. 1970, c. 254, s. 8 (1); 1973, c. 128, s. 3.

New
corporation
acquiring
assets of
existing
corporation

(2) Where the corporation is to be constituted for the purpose of acquiring the assets of one or more existing corporations and the proposed consideration for the transfer of the assets is to consist wholly or in part of shares of the capital stock of the new corporation, the Lieutenant Governor in Council may dispense with the requirements of subsection (1) as to subscription and payment to such extent as the Lieutenant Governor in Council considers proper. R.S.O. 1970, c. 254, s. 8 (2).

10.—(1) No share shall be issued until it is fully paid and a share is not fully paid until all consideration therefor has been received by the corporation. Fully paid shares

(2) No shares of any class shall be issued at a discount or upon any terms, agreement or understanding that the holder thereof is liable for any lesser amount than the par value thereof. R.S.O. 1970, c. 254, s. 9 (1, 2). No issue of shares at discount

(3) No transfer of shares shall be made that has the effect of reducing the number of shareholders to less than five. R.S.O. 1970, c. 254, s. 9 (3); 1973, c. 128, s. 4 (1). No transfer to reduce number of shareholders to less than 5

(4) Shares without par value shall not be allotted or issued except for such consideration as the by-laws provide. 1973, c. 128, s. 4 (2). Consideration for no par value shares

11.—(1) A grant of incorporation shall be by letters patent. Letters patent

(2) The letters patent shall set forth the name under which, and the date at which, the corporation became incorporated, the location of the head office, the amount of stock authorized, and the business to be undertaken by the corporation, distinguishing between the classes of business mentioned in section 148. R.S.O. 1970, c. 254, s. 10. Contents

12. Incorporation may be granted without limitation of time or for any limited term of years not less than ten. R.S.O. 1970, c. 254, s. 11. Term

13.—(1) Where incorporation is granted for a limited term of years, the letters patent shall specify the first and the last day of the term. Term to be specified if limited

(2) Where incorporation has been granted for a limited term, application may, upon the like notice as is required by section 4, be made on or before the expiry of the term for the renewal or extension of the incorporation, and the incorporation may be renewed or extended by letters patent either without limitation of time or for a limited term. R.S.O. 1970, c. 254, s. 12. Renewal of terminating charter

14.—(1) If a corporation does not go into actual *bona fide* operation and becomes registered under this Act within two years after incorporation or if it does not use its corporate powers for the purposes set forth in its letters patent, the Act or instrument of incorporation, or is not registered under this Act during a period of two consecutive years, its corporate powers, except so far as is necessary for winding up the corporation, shall thereupon cease and determine. Termination of corporate powers where non-user

Onus of
proof of
user

(2) In any action or proceeding where such non-user is alleged, proof of user lies upon the corporation.

Rights of
creditors not
affected

(3) No such forfeiture affects prejudicially the rights of creditors as they exist at the date of the forfeiture.

Charter
may be
revived

(4) The Lieutenant Governor in Council may upon application revive any charter so forfeited, upon compliance with such conditions and upon payment of such fees as the Lieutenant Governor in Council may designate. R.S.O. 1970, c. 254, s. 13.

Consent of
holders to
redemption

15. Unless preference shares, debentures or bonds are issued subject to redemption or conversion, they are not subject to redemption or conversion without the consent of the holders thereof. R.S.O. 1970, c. 254, s. 14.

First
directors
of the
corporation

16. Where incorporation is granted, the provisional directors named in the declaration of the applicants are the first directors of the corporation, and shall continue in office until their successors are duly elected. R.S.O. 1970, c. 254, s. 15.

When letters
patent of
trust or loan
company
may issue

17.—(1) Letters patent of incorporation of a trust or loan company may issue where it is shown to the satisfaction of the Lieutenant Governor in Council that, in the locality in which the head office of the proposed company is to be situate, there exists a public necessity for a trust or loan company or for an additional trust or loan company.

Satisfying
Lieutenant
Governor of
fitness of
applicants

(2) Such letters patent shall not issue unless the Lieutenant Governor in Council is satisfied that the fitness of the applicants to discharge the duties of a trust or loan company is such as to command the confidence of the public and that the public convenience and advantage will be promoted by granting to the company the powers applied for. R.S.O. 1970, c. 254, s. 16.

Application
by loan
corporation
for power to
act as agent

18.—(1) A loan corporation may apply by petition to the Lieutenant Governor in Council for an order authorizing the corporation to act generally as agent for the transaction of business, the collection of loans, rents, interest, dividends, mortgages and other securities for money, as a depository for the safekeeping of securities and personal property and to carry on the business of a mortgage or real estate broker.

Application
authorized
by resolution

(2) An application under subsection (1) shall be authorized by a resolution of the directors.

Amendment
of
registration

(3) Upon the making of an order under subsection (1), the Registrar shall amend the registration of the corporation

kept under clause 148 (1) (a) and subsection 163 (1). R.S.O. 1970, c. 254, s. 17.

19.—(1) A loan corporation incorporated and registered under this Act may apply by petition to the Lieutenant Governor in Council for an order designating it as a mortgage investment company for the purpose of carrying on business as a mortgage investment corporation within the meaning of the *Income Tax Act* (Canada) and such order may be made subject to such terms and conditions as may be prescribed by the Lieutenant Governor in Council. ^{Mortgage investment company} ^{R.S.C. 1952, c. 148}

(2) Notwithstanding section 104, a loan corporation that is designated as a mortgage investment company shall not borrow money on deposit. ^{Not to take deposits}

(3) A loan corporation that is designated as a mortgage investment company shall carry on its undertaking in Ontario and the other provinces and territories of Canada only. ^{Business confined}

(4) A loan corporation that is designated as a mortgage investment company shall not commence business as a mortgage investment company until its by-laws have been amended to conform to the terms and conditions prescribed, the provisions of sections 20 to 24, and the regulations and such by-laws have been filed with and approved by the Registrar. ^{By-laws must conform}

(5) Upon the making of the order under subsection (1) and the amendment and approval of the by-laws under subsection (3), the Registrar shall amend the registration of the loan corporation kept under clause 148 (1) (a) and subsection 163 (1). 1973, c. 128, s. 5, *part*. ^{Amendment of registration}

20.—(1) Notwithstanding sections 178 and 179 and subject to subsection (2), a loan corporation designated as a mortgage investment company shall have and maintain at least 50 per cent of the book value of its assets in one or more of the following forms, ^{Investments}

(a) investments in mortgages or hypothecs on residential property as defined in the *Residential Mortgage Financing Act* (Canada) or loans on the security of such property; and ^{1973, c. 49 (Can.)}

(b) cash on hand or on deposit in a bank or other depository approved by the Registrar.

Idem

(2) The total of,

1973, c. 49
(Can.)

(a) the book value of the investments of a mortgage investment company in shares of the capital stock of companies at least 85 per cent of whose assets are in the form of residential property as defined in the *Residential Mortgage Financing Act* (Canada); and

(b) the book value of the investments of a mortgage investment company in real estate or leaseholds before deducting the amount of any charges or liens thereon but excluding real estate or leaseholds acquired by the company by foreclosure or otherwise after default made on a mortgage, hypothec or agreement of sale in respect thereof,

shall not exceed 25 per cent of the book value of its total assets. 1973, c. 128, s. 5, *part*.

Investment
in real estate
or leaseholds

21.—(1) Notwithstanding sections 178 and 179, a loan corporation designated as a mortgage investment company may invest its funds in real estate or leaseholds in Canada for the production of income, either alone or jointly with any corporation incorporated in Canada or any person administering a trust governed by a registered pension plan or deferred profit sharing plan as those plans are defined in the *Income Tax Act* (Canada), if,

R.S.C. 1952,
c. 148

(a) a lease of the real estate or leasehold is made to, or guaranteed by,

(i) the government, or an agency of the government, of the province in which the real estate or leasehold is situated, a municipality in that province or an agency of such municipality, or

(ii) a corporation, the preferred shares or common shares of which are, at the date of investment, authorized as investments by clause 178 (1) (l) or (m); and

(b) the lease provides for a net revenue sufficient to yield a reasonable interest return during the period of the lease and to repay at least 85 per cent of the amount invested by the company in the real estate or leasehold within the period of the lease, but not exceeding thirty years from the date of investment,

and the company may hold, maintain, improve, lease, sell or otherwise deal with or dispose of the real estate or leasehold.

(2) A loan corporation designated as a mortgage investment company may invest its funds in real estate or leaseholds in Canada for the production of income, either alone or jointly with any corporation incorporated in Canada or any person administering a trust governed by a registered pension plan or deferred profit sharing plan as those plans are defined in the *Income Tax Act* (Canada), if the real estate or leasehold has produced, in each of the three years immediately preceding the date of investment, net revenue in an amount that, if continued in future years, would be sufficient to yield a reasonable interest return on the amount invested in the real estate or leasehold and to repay at least 85 per cent of that amount within the remaining economic lifetime of the improvements to the real estate or leasehold but not exceeding forty years from the date of investment, and the company may hold, maintain, improve, repair, lease, sell or otherwise deal with or dispose of the real estate or leasehold.

Idem
R.S.C. 1952,
c. 148

(3) Clauses 178 (1) (n) and (o) do not apply in respect of a corporation to which this section applies. 1973, c. 128, s. 5, *Application of s. 178 (1) (n, o) part.*

22.—(1) A loan corporation designated as a mortgage investment company may, subject to this section, make investments and loans not authorized by sections 20, 21 and 178, including investments in real estate or leaseholds.

Other
investments
"basket
clause"

(2) Investments in real estate or leaseholds in Canada made under subsection (1) shall be made only for the production of income, and may be made either alone or jointly with any corporation incorporated in Canada or any person administering a trust governed by a registered pension plan or deferred profit sharing plan as those plans are defined in the *Income Tax Act* (Canada); and the company may hold, maintain, improve, repair, lease, sell or otherwise deal with or dispose of such real estate or leaseholds.

Production
of income

(3) This section shall be deemed not to, Saving

(a) enlarge the authority conferred by section 178 to invest in mortgages or hypothecs and to lend on the security of real estate or leaseholds; or

(b) affect the operation of section 185 with reference to the maximum proportion of common shares and

total shares of any corporation that may be purchased.

Limit

(4) Section 179 does not apply in respect of a company to which subsection (1) applies but the total value of the investments made under subsection (1) and held by the company, excluding those that are or at any time since acquisition have been authorized as investments apart from that subsection, shall not exceed 7 per cent of the book value of the total assets of the company. 1973, c. 128, s. 5, *part*.

Borrowing
powers
limited

23.—(1) Notwithstanding section 109, the aggregate of the sums of money borrowed by a loan corporation designated as a mortgage investment company and outstanding shall not at any time exceed five times the excess of the book value of the assets of the company over its liabilities, but if at any particular time the book value of the assets of the company in the form of,

1973, c. 49,
(Can.)

(a) investments in mortgages or hypothecs on residential property as defined in the *Residential Mortgage Financing Act* (Canada) or loans on the security of such property; and

(b) cash on hand or on deposit in a bank or other depository approved by the Superintendent of Insurance,

are less than two-thirds of the book value of the assets of the company, the aggregate of the sums of money borrowed by the company and outstanding shall not at that time exceed three times the excess of the book value of the assets of the company over its liabilities.

Computing
sums
borrowed

(2) For the purpose of subsection (1), the principal amount of any charges or liens on the real estate or leaseholds remaining unpaid shall be included in the computation of the sums of money borrowed by the corporation. 1973, c. 128, s. 5, *part*; 1974, c. 88, s. 4.

Liquidity
level

24.—(1) A loan corporation designated as a mortgage investment company shall so manage its affairs that the aggregate of,

(a) all repayments of principal on mortgages or hypothecs held by it and reasonably expected to be received within the year;

(b) amounts maturing on its other investments within the year;

- (c) such amount of credit from chartered banks in Canada as is acquired in accordance with conditions imposed by the Superintendent of Insurance; and
- (d) cash on hand or on deposit in a bank or other depository approved by the Superintendent of Insurance,

shall at all times be equal to or in excess of the aggregate of the sum of all mortgage commitments made by it and falling due within the year and the amount of all debt instruments issued by it and maturing within the year.

(2) In this section, the expression "within the year" means the twelve-month period following the month in which the calculation is made. 1973, c. 128, s. 5, *part*. Meaning of "within the year"

25. Notwithstanding subsection 388 (1) of the *Insurance Act* and sections 178 and 181 of this Act, the shares, debentures and other evidence of indebtedness of a loan corporation designated as a mortgage investment company under this Act or under the *Loan Companies Act* (Canada) are an eligible investment for the funds of insurance companies, trust companies and other loan corporations. 1974, c. 88, s. 5. Shares eligible for investment
R.S.O. 1980, c. 218
R.S.C. 1970, c. L-12

26. The Lieutenant Governor in Council may make regulations with respect to loan corporations designated as mortgage investment companies, Regulations

- (a) prescribing limitations on their dealings with companies providing investment advice or management services;
- (b) prescribing limitations and restrictions with respect to their purchase or acquisition of assets from or sale of assets to their directors, officers or shareholders;
- (c) providing for their redesignation as loan corporations. 1973, c. 128, s. 5, *part*.

STATUTORY MEETINGS

27.—(1) Every corporation shall, within a period of not less than one month and not more than three months from the date at which the corporation is entitled to commence business, hold a general meeting of its shareholders called "the statutory meeting". Statutory meetings

Report to
be sent to
shareholders

(2) The directors shall, at least ten days before the day on which the meeting is to be held, forward to every shareholder of the corporation a report certified by not fewer than two directors of the corporation showing,

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;
- (b) the total amount of cash received by the corporation in respect of such shares, distinguished as aforesaid;
- (c) an abstract of the receipts and payments of the corporation on capital account to the date of the report, and an account or estimate of the preliminary expenses of the corporation;
- (d) the names, addresses and descriptions of the directors, auditors, if any, manager, if any, and secretary of the corporation; and
- (e) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

Report to be
certified by
auditors

(3) The report, so far as it relates to the shares allotted by the corporation, and to the cash received in respect of such shares, and to the receipts and payments of the corporation on capital account, shall be certified as correct by the auditors, if any, of the corporation.

Report to be
filed with
Registrar

(4) The directors shall cause a copy of the certified report to be filed with the Registrar forthwith after sending it to the shareholders.

List of
shareholders
to be
produced at
meeting

(5) The directors shall cause a list showing the names and addresses of the shareholders, and the number of shares held by each of them, to be produced at the commencement of the meeting, and to remain open and accessible to any shareholder of the corporation during the continuance of the meeting.

Shareholders
may discuss
business of
company at
meeting

(6) The shareholders present at the meeting are at liberty to discuss any matter relating to the formation of the corporation, or arising out of the report, whether previous notice has been given or not, but no resolution of which notice has not been duly given shall be passed.

(7) The meeting may adjourn from time to time, and at any such adjourned meeting any resolution of which notice has been duly given, either before or after the former meeting, may be passed, and an adjourned meeting has the same powers as the original meeting. Adjourn-
ments

(8) If default is made in filing the report or in holding the statutory meeting, then at the expiration of fourteen days after the last day on which the meeting ought to have been held any shareholder may petition the Supreme Court for the winding up of the corporation, and the court may either direct that the corporation be wound up or give directions for the report being filed or a meeting being held, or make such other order as is just, and may order that the costs of the petition be paid by the persons who, in the opinion of the court, are responsible for the default. R.S.O. 1970, c. 254, s. 18. Application
to court
if default
made

GENERAL MEETINGS OF SHAREHOLDERS

28.—(1) A corporation shall hold an annual meeting of shareholders at the head office of the corporation or elsewhere in Ontario at least once in each year for the purposes of considering the financial statement of the corporation required to be laid before the meeting by section 101, the election of directors, the appointment of auditors and the transaction of such other business as is permitted or required by law or by the by-laws of the corporation. Annual
meeting

(2) Notice of the time and place of the annual meeting shall be given to each person who on the record date for notice appears on the records of the corporation as a shareholder by delivering or sending the notice by mail to his latest address as shown on the records of the corporation at least ten days before the date of the meeting. R.S.O. 1970, c. 254, s. 19. Notice

29.—(1) The directors of a corporation may at any time by resolution call a general meeting of the shareholders for the transaction of any business specified in the resolution. General
meetings

(2) Shareholders holding not less than 10 per cent of the issued shares of a corporation carrying the right to vote at the meeting may request the directors to call a general meeting of the shareholders for any purpose that is connected with the affairs of the corporation and that is not inconsistent with this Act. Requisition
by
shareholders

(3) The requisition shall state the general nature of the business to be presented at the meeting and shall be signed Form of
requisition

by the requisitionists and deposited at the head office of the corporation, and may consist of several documents in like form signed by one or more requisitionists.

Directors to
call general
meeting

(4) Upon deposit of the requisition, the directors shall call forthwith a general meeting of the shareholders for the transaction of the business stated in the requisition.

Notice

(5) Notice of any general meeting of the shareholders shall be given in the manner provided in subsection 28 (2).

Other
business

(6) No business other than that specified in the notice thereof shall be transacted at a general meeting unless all the shareholders are present in person or are represented by proxy and unanimously consent thereto. R.S.O. 1970, c. 254, s. 20.

Offence

30. Every director or officer of a corporation wilfully neglecting or omitting to give or cause to be given the notice for any general meeting required by section 29 is guilty of an offence. R.S.O. 1970, c. 254, s. 21.

Record
dates

31. The by-laws may provide for the fixing in advance of a date as the record date,

(a) for the determination of the shareholders entitled to notice of meetings of the shareholders, which record date for notice shall not be more than fifty days before the date of the meeting and not fewer than the minimum number of days for notice of the meeting and, where no such record date for notice is fixed by by-law, the record date for notice shall be at the close of business on the day next preceding the day on which notice is given or sent; and

(b) for the determination of the shareholders entitled to vote at meetings of the shareholders, which record date for voting shall be not more than forty-eight hours, excluding Saturdays and holidays, before the date of the meeting and, where no such record date for voting is fixed by by-law, the record date for voting shall be at the time of the taking of the vote. R.S.O. 1970, c. 254, s. 22.

Voting
rights

32. The holder of each common share and, subject to clause 5 (2) (d), the holder of each preference share who on the record date for voting appears on the records of the corporation as a shareholder is entitled to one vote for each share held by him, upon which he is not in arrear in respect of any call, at all meetings of shareholders of the corporation. R.S.O. 1970, c. 254, s. 23.

33. In this section and in sections 35 to 40,

Interpre-
tation

- (a) “Commission” means the Ontario Securities Commission;
- (b) “company” means a body corporate, including a corporation to which this Act applies;
- (c) “form of proxy” means a written or printed form that, upon completion and execution by or on behalf of a shareholder, becomes a proxy;
- (d) “information circular” means the circular referred to in subsection 36 (1);
- (e) “proxy” means a completed and executed form of proxy by means of which a shareholder has appointed a person as his nominee to attend and act for him and on his behalf at a meeting of shareholders;
- (f) “solicit” and “solicitation” include,
 - (i) any request for a proxy whether or not accompanied by or included in a form of proxy,
 - (ii) any request to execute or not to execute a form of proxy or to revoke a proxy,
 - (iii) the sending or delivery of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and
 - (iv) the sending or delivery of a form of proxy to a shareholder pursuant to section 35,

but do not include,

- (v) the sending or delivery of a form of proxy to a shareholder in response to an unsolicited request made by him or on his behalf, or
- (vi) the performance by any person of ministerial acts or professional services on behalf of a person soliciting a proxy. 1973, c. 128, s. 6, *part.*

34.—(1) Every shareholder of a corporation, including a ^{Proxies} shareholder that is a company, entitled to vote at a meeting

of shareholders may by means of a proxy appoint a person, who need not be a shareholder, as his nominee to attend and act at the meeting in the manner, to the extent and with the power conferred by the proxy.

Execution
and
termination

(2) A proxy shall be executed by the shareholder or his attorney authorized in writing or, if the shareholder is a company, under its corporate seal or by an officer or attorney thereof duly authorized, and ceases to be valid one year from its date.

Contents

(3) In addition to the requirements, where applicable, of section 38, a proxy shall contain the date thereof and the appointment and name of the nominee and may contain a revocation of a former proxy and restrictions, limitations or instructions as to the manner in which the shares in respect of which the proxy is given are to be voted or that may be necessary to comply with the laws of any jurisdiction in which the shares of the provincial corporation are listed on a stock exchange or a restriction or limitation as to the number of shares in respect of which the proxy is given.

Revocation

(4) In addition to revocation in any other manner permitted by law, a proxy may be revoked by instrument in writing executed by the shareholder or by his attorney authorized in writing or, if the shareholder is a company, under its corporate seal or by an officer or attorney thereof duly authorized, and deposited either at the head office of the corporation at any time up to and including the last business day preceding the day of the meeting, or any adjournment thereof, at which the proxy is to be used or with the chairman of such meeting on the day of the meeting, or adjournment thereof, and upon either of such deposits the proxy is revoked.

Time limit
for deposit

(5) The directors may by resolution fix a time not exceeding forty-eight hours, excluding Saturdays and holidays, preceding any meeting or adjourned meeting of shareholders before which time proxies to be used at that meeting must be deposited with the provincial corporation or an agent thereof, and any period of time so fixed shall be specified in the notice calling the meeting or in the information circular relating thereto. 1973, c. 128, s. 6, *part*.

Mandatory
solicitation
of proxies

35.—(1) Subject to section 37, the management of a corporation shall, concurrently with or prior to giving notice of a meeting of shareholders of the corporation, send by prepaid mail to each shareholder who is entitled to vote at such meeting at his last address as shown on the books of the corporation a form of proxy for use at such meeting that complies with section 38.

(2) If the management of a provincial corporation fails to ^{Offence} comply with subsection (1), the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$1,000, and every director or officer of the corporation who authorized, permitted or acquiesced in such failure is also guilty of an offence and on conviction is liable to a like fine. 1973, c. 128, s. 6, *part.*

36.—(1) Subject to subsection (2) and section 37, no person ^{Information circular} shall solicit proxies unless,

- (a) in the case of a solicitation by or on behalf of the management of a corporation, an information circular, either as an appendix to or as a separate document accompanying the notice of the meeting, is sent by prepaid mail to each shareholder of the corporation whose proxy is solicited at his last address as shown on the books of the corporation; or
- (b) in the case of any other solicitation, the person making the solicitation, concurrently with or prior thereto, delivers or sends an information circular to each shareholder of the corporation whose proxy is solicited.

(2) Subsection (1) does not apply to,

Where
subs. (1)
does not
apply

- (a) any solicitation, otherwise than by or on behalf of the management of a corporation, where the total number of shareholders whose proxies are solicited is not more than fifteen, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder;

- (b) any solicitation by a person made under section 48 of the *Securities Act*; and

R.S.O. 1980,
c. 466

- (c) any solicitation by a person in respect of shares of which he is the beneficial owner.

(3) A person who fails to comply with subsection (1) is guilty of ^{Offence} an offence and on conviction is liable to a fine of not more than \$1,000, and, where such person is a corporation, every director or officer of such corporation who authorized, permitted or acquiesced in such failure is also guilty of an offence and on conviction is liable to a like fine.

(4) A person who effects a solicitation that is subject to ^{Idem} this section by means of a form of proxy, information circular or other communication that contains an untrue statement of a material fact or omits to state a material fact necessary in

order to make any statement contained therein not misleading in the light of the circumstances in which it was made is guilty of an offence and on conviction is liable to a fine of not more than \$1,000, and, where such person is a company, every director or officer of such company who authorized, permitted or acquiesced in such offence is also guilty of an offence and on conviction is liable to a like fine.

Saving

(5) No person is guilty of an offence under subsection (4) in respect of any untrue statement of a material fact or omission to state a material fact in a form of proxy or information circular, if the untruth of such statement or the fact of such omission was not known to the person who effected the solicitation and in the exercise of reasonable diligence could not have been known to such person. 1973, c. 128, s. 6, *part.*

Where
s. 35 and
s. 36 (1) do
not apply

37.—(1) Section 35 and subsection 36 (1) do not apply to a corporation that has fewer than fifteen shareholders, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder.

Exemption
orders

(2) Upon the application of any interested person, the Commission may, if satisfied that in the circumstances of the particular case there is adequate justification for so doing, make an order, on such terms and conditions as seem to the Commission to be just and expedient, exempting any person from the requirements, in whole or in part, of section 35 or of subsection 36 (1).

Hearing of
Commission
R.S.O. 1980,
c. 466

(3) The provisions of the *Securities Act* respecting hearings by the Commission apply, so far as possible, to hearings of the Commission under this section.

Appeal
from
Commissions

(4) Any person who feels aggrieved by a decision of the Commission under this section may appeal the decision to the Divisional Court, and subsections 9 (2) to (6) of the *Securities Act* apply to the appeal. 1973, c. 128, s. 6, *part.*

Special form
of proxy

38. Where section 35 or 36 is applicable to a solicitation of proxies,

(a) the form of proxy sent to a shareholder by a person soliciting proxies,

(i) shall indicate in bold-face type whether or not the proxy is solicited by or on behalf of the management of the corporation, and

(ii) shall provide a specifically designated blank space for dating the form of proxy;

(b) the form of proxy shall provide means whereby the person whose proxy is solicited is afforded an opportunity to specify that the shares registered in his name shall be voted by the nominee in favour of or against, in accordance with such person's choice, each matter or group of related matters identified therein or in the information circular as intended to be acted upon, other than the election of directors and the appointment of auditors, provided that a proxy may confer discretionary authority with respect to matters as to which a choice is not so specified by such means if the form of proxy or the information circular states in bold-face type how it is intended to vote the shares represented by the proxy in each such case;

(c) a proxy may confer discretionary authority with respect to,

- (i) amendments or variations to matters identified in the notice of meeting, or
- (ii) other matters which may properly come before the meeting,

provided that,

- (iii) the person by whom or on whose behalf the solicitation is made is not aware a reasonable time prior to the time the solicitation is made that any such amendments, variations or other matters are to be presented for action at the meeting, and
- (iv) a specific statement is made in the information circular or in the form of proxy that the proxy is conferring such discretionary authority;

(d) no proxy shall confer authority,

- (i) to vote for the election of any person as a director of the corporation unless a *bona fide* proposed nominee for such election is named in the information circular, or
- (ii) to vote at any meeting other than the meeting specified in the notice of meeting or any adjournment thereof;

- (e) the information circular or form of proxy shall state that the shares represented by the proxy will be voted and that, where the person whose proxy is solicited specifies a choice with respect to any matter to be acted upon under clause (b), the shares shall, subject to section 39, be voted in accordance with the specifications so made;
- (f) the information circular or form of proxy shall indicate in bold-face type that the shareholder has the right to appoint a person to attend and act for him and on his behalf at the meeting other than the person, if any, designated in the form of proxy, and shall contain instructions as to the manner in which the shareholder may exercise such right; and
- (g) if the form of proxy contains a designation of a named person as nominee, means shall be provided whereby the shareholder may designate in a form of proxy some other person as his nominee for the purpose of subsection 34 (1). 1973, c. 128, s. 6, *part*.

Where vote
by ballot
not
required

39. The chairman at a meeting has the right not to conduct a vote by way of ballot on any matter or group of matters in connection with which the form of proxy has provided a means whereby the person whose proxy is solicited may specify how such person wishes the shares registered in his name to be voted unless,

- (a) a poll is demanded by any shareholder present at the meeting in person or represented thereat by proxy; or
- (b) proxies requiring that the shares represented thereby be voted against what would otherwise be the decision of the meeting in relation to such matter or group of matters total more than 5 per cent of all the voting rights attaching to all the shares entitled to be voted and be represented at the meeting. 1974, c. 88, s. 6.

Regulations
re contents
of informa-
tion circular

40. The Lieutenant Governor in Council may make such regulations respecting the form and content of an information circular as he considers necessary or appropriate in the public interest. 1973, c. 128, s. 6, *part*.

Minute
book

41. The transactions of all general meetings of the corporation and of all meetings of the board of directors shall be entered in a book known as the "minute book" of the corporation. R.S.O. 1970, c. 254, s. 25.

INSIDER TRADING

42.—(1) In this section and in sections 43 to 48,

Interpre-
tation

(a) “affiliate” means an affiliated company within the meaning of subsection 106 (3) of the *Corporations Act*; R.S.O. 1980, c. 95

(b) “associate”, where used to indicate a relationship with any person, means,

(i) any company of which such person beneficially owns, directly or indirectly, equity shares carrying more than 10 per cent of the voting rights attached to all equity shares of the company for the time being outstanding,

(ii) any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar capacity, or

(iii) any relative or spouse of such person or any relative of such spouse who, in any such case, has the same home as such person;

(c) “capital security” means any share of any class of shares of a company or any bond, debenture, note or other obligation of a company, whether secured or unsecured;

(d) “Commission” means the Ontario Securities Commission;

(e) “company” means a body corporate, including a corporation to which this Act applies;

(f) “equity share” means any share of any class of shares of a company carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing;

(g) “insider” or “insider of a company” means,

(i) any director or senior officer of a company that has fifteen or more shareholders, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder,

- (ii) any person who beneficially owns, directly or indirectly, equity shares of such a company carrying more than 10 per cent of the voting rights attached to all equity shares of the company for the time being outstanding, provided that in computing the percentage of voting rights attached to equity shares owned by an underwriter there shall be excluded any equity shares that have been acquired by him as underwriter in the course of distribution to the public of such shares, but such exclusion ceases to have effect on completion or cessation of the distribution to the public by him, or
 - (iii) any person who exercises control or direction over the equity shares of such a company carrying more than 10 per cent of the voting rights attached to all equity shares of the company for the time being outstanding;
- (h) “senior officer” means,
- (i) the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a company or any other individual who performs functions for the company similar to those normally performed by an individual occupying any such office, and
 - (ii) each of the five highest paid employees of a company, including any individual referred to in subclause (i);

R.S.O. 1980,
c. 466

- (i) “underwriter” has the same meaning as in the *Securities Act*.

Idem

- (2) For the purposes of this section and sections 43 to 48,

- (a) every director or senior officer of a company that is itself an insider of another company shall be deemed to be an insider of such other company;
- (b) an individual shall be deemed to own beneficially capital securities beneficially owned by a company controlled by him or by an affiliate of such company;

(c) a company shall be deemed to own beneficially capital securities beneficially owned by its affiliates; and

(d) the acquisition or disposition by an insider of a put, call or other transferable option with respect to a capital security shall be deemed a change in the beneficial ownership of the capital security to which such transferable option relates. 1973, c. 128, s. 7, *part.*

43.—(1) A person who becomes an insider of a cor- ^{Report}poration shall, within ten days after the end of the month in which he becomes an insider, file with the Commission a report, as of the day on which he became an insider, of his direct or indirect beneficial ownership of or control or direction over capital securities of the corporation.

(2) If a person who is an insider of a corporation, but ^{Idem} has no direct or indirect beneficial ownership of or control or direction over capital securities of the corporation, acquires direct or indirect beneficial ownership of or control or direction over any such securities, he shall, within ten days after the end of the month in which he acquired such direct or indirect beneficial ownership or such control or direction, file with the Commission a report, as of the date of such acquisition, of his direct or indirect beneficial ownership of or control or direction over capital securities of the corporation.

(3) A person who has filed or is required to file a report ^{Report of subsequent changes} under this section or any predecessor thereof and whose direct or indirect beneficial ownership of or control or direction over capital securities of the corporation changes from that shown or required to be shown in such report or in the last report filed by him under this subsection shall, within ten days following the end of the month in which such change takes place, provided that he was an insider of the corporation at any time during such month, file with the Commission a report of his direct or indirect beneficial ownership of or his control or direction over capital securities of the corporation at the end of such month and the change or changes therein that occurred during the month, and giving such details of each transaction as may be required by the regulations made under section 48. 1973, c. 128, s. 7, *part.*

44.—(1) All reports filed with the Commission under ^{Reports may be inspected} section 43 or any predecessor thereof shall be open to public inspection at the offices of the Commission during

normal business hours of the Commission, and any person may make extracts from such reports.

Publication
of informa-
tion
contained in
reports

(2) The Commission shall summarize in or as part of a monthly periodical for distribution to the public on payment of a reasonable fee therefor the information contained in the reports so filed. 1973, c. 128, s. 7, *part*.

Offence

45.—(1) Every person who is required to file a report under section 43 or any predecessor thereof and who fails so to do is guilty of an offence and on conviction is liable to a fine of not more than \$1,000, and, where such person is a company, every director or officer of such company who authorized, permitted or acquiesced in such failure is also guilty of an offence and on conviction is liable to a like fine.

Idem

(2) Every person who files a report under section 43 or any predecessor thereof that is false or misleading by reason of the misstatement or omission of a material fact is guilty of an offence and on conviction is liable to a fine of not more than \$1,000, and, where such person is a company, every director or officer of such company who authorized, permitted or acquiesced in the filing of such false or misleading report is also guilty of an offence and on conviction is liable to a like fine.

Saving

(3) No person is guilty of an offence under subsection (2) if he did not know and in the exercise of reasonable diligence could not have known that the report was false or misleading by reason of the misstatement or omission of a material fact.

Consent
to prosecute

(4) No prosecution shall be brought under subsection (1) or (2) without the consent of the Commission. 1973, c. 128, s. 7, *part*.

Liability
of insiders

46.—(1) Every insider of a corporation or associate or affiliate of such insider, who, in connection with a transaction relating to the capital securities of the corporation, makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of such securities, is liable to compensate any person for any direct loss suffered by such person as a result of such transaction, unless such information was known or ought reasonably to have been known to such person at the time of such transaction, and is also accountable to the corporation for any direct benefit or advantage received or receivable by such insider, associate or affiliate, as the case may be, as a result of such transaction.

(2) An action to enforce any right created by subsection (1) may be commenced only within two years after the date of completion of the transaction that gave rise to the cause of action. 1973, c. 128, s. 7, *part*. Limitation period

47.—(1) Upon application by any person who was at the time of a transaction referred to in subsection 46 (1) or is at the time of the application an owner of capital securities of the corporation, a judge of the High Court designated by the Chief Justice of the High Court may, if satisfied that, Order to commence action

(a) such person has reasonable grounds for believing that the corporation has a cause of action under section 46; and

(b) either,

(i) the corporation has refused or failed to commence an action under section 46 within sixty days after receipt of a written request from such person so to do, or

(ii) the corporation has failed to prosecute diligently an action commenced by it under section 46,

make an order, upon such terms as to security for costs and otherwise as to the judge seems fit, requiring the Commission to commence or continue an action in the name of and on behalf of the corporation to enforce the liability created by section 46.

(2) The corporation and the Commission shall be given notice of any application under subsection (1) and shall have the right to appear and be heard thereon. Notice to corporation and O.S.C.

(3) Every order made under subsection (1) shall provide that the corporation shall co-operate fully with the Commission in the institution and prosecution of such action and shall make available to the Commission all books, records, documents and other material or information known to the corporation or reasonably ascertainable by the corporation relevant to such action. Order to require corporation to co-operate

(4) An appeal lies to the Divisional Court from an order made under subsection (1). 1973, c. 128, s. 7, *part*. Appeal

Regulations

48. The Lieutenant Governor in Council may make regulations,

- (a) prescribing the form and content of the reports required to be filed under section 43;
- (b) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of sections 42 to 47. 1973, c. 128, s. 7, *part*.

BY-LAWS

Shareholders
may make
by-laws

49. A meeting of the shareholders, called with due notice thereof, may make such lawful and proper by-laws for the government of the corporation, not repugnant to this Act or any other law in force in Ontario, as the majority of the shareholders present in person or by proxy consider proper. R.S.O. 1970, c. 254, s. 27.

To be
sealed

50. Every by-law shall be reduced to writing and shall have affixed thereto the seal of the corporation, and is receivable in evidence without proof of the seal or of the signature or of the official character of the person or persons appearing to have signed it, and without further proof thereof. R.S.O. 1970, c. 254, s. 28.

By-laws
to be
recorded

51.—(1) The by-laws shall be forthwith recorded in a book to be kept by the corporation known as the “by-law book”.

Right to
inspect
by-law book

(2) The by-law book shall, without the payment of any fee or charge, be open during business hours for inspection by any shareholder, depositor, debenture holder or holder of a guaranteed investment certificate, by himself or his agent, and any such person may make extracts therefrom. R.S.O. 1970, c. 254, s. 29.

Copy of
by-laws,
etc., to be
filed with
Registrar

52. Every corporation shall deliver to the Registrar within one month after the passing thereof a certified copy of its by-laws and of every repeal, or addition thereto, or amendment or consolidation thereof. R.S.O. 1970, c. 254, s. 30.

Delegating
to directors
power to
make or
amend
by-laws

53.—(1) The shareholders in meeting may by by-law, of which, as proposed, notice shall be given to each shareholder with the notice of the meeting, empower the directors to make, amend and repeal by-laws for the corporation.

Confirmation
necessary

(2) Every such by-law of the directors and every repeal, amendment or re-enactment thereof, unless in the meantime confirmed at a general meeting of the corporation duly called for that purpose, has force only until the next annual meeting

of the corporation, and in default of confirmation thereat, at and from that time, ceases to have force, and in that case no new by-law to the same or the like effect or re-enactment thereof has any force until confirmed at a general meeting.

(3) The corporation may at a general meeting duly called ^{By-laws may be varied} for the purpose or at an annual meeting repeal, amend, vary or otherwise deal with any by-law passed by the directors, but no act done or right acquired under any by-law is prejudicially affected by any such repeal, amendment, variation, or other dealing. R.S.O. 1970, c. 254, s. 31.

54. The shareholders at a general meeting may alter or ^{Alteration at general meeting} amend such by-laws and may confirm them as so altered and amended. R.S.O. 1970, c. 254, s. 32.

55. The directors of a corporation, authorized as provided ^{By-laws for particular purposes} by section 53, may make by-laws, not repugnant to this Act or any other law in force in Ontario, to regulate,

- (a) the allotment and issue of shares, the making of calls thereon, the payment thereof, the issue and registration of certificates of shares, the forfeiture of shares for non-payment, the disposal of forfeited shares and of the proceeds thereof, the transfer of shares, and, subject to section 88, the subdivision of existing shares into shares of smaller amount;
- (b) the declaration and payment of dividends;
- (c) subject to section 98, the appointment, functions, duties and removal of agents, officers and servants of the corporation, and their remuneration;
- (d) the calling of meetings of the directors and the procedure at such meetings; and
- (e) the conduct in all other particulars of the affairs of the corporation. R.S.O. 1970, c. 254, s. 33.

DIRECTORS

56.—(1) The term of office of the directors of a corpora- ^{Term of office} tion shall not exceed two years.

(2) Where the term of office is one year only, the number ^{Number} of directors shall not be fewer than five.

(3) Where the term of office is two years, the number of ^{Idem} directors shall be an even number not fewer than six, and

one-half of the directors shall retire annually at the general meeting in rotation, but, if otherwise qualified, are eligible for re-election.

Retirement
by lot

(4) Where the term of office is two years, the first elected directors shall at their first meeting determine by lot which of them shall retire at the end of the first year. R.S.O. 1970, c. 254, s. 34.

Ballot

57.—(1) The election of directors shall be by ballot. R.S.O. 1970, c. 254, s. 35 (1).

Qualifica-
tions of
directors

(2) No person is qualified to be a director unless he is of the full age of eighteen years and he is a shareholder holding, in his own right, shares of the corporation in respect of which, either,

(a) at least \$1,000 has been paid in; or

(b) at the time of purchase had a market value of at least \$2,500,

and he is not in arrears in respect of any call thereon. 1973, c. 128, s. 8.

Retirement
age

(3) On and after the 1st day of January, 1972, no person is qualified for appointment or election as a director if he has attained the age of seventy-five years.

Majority
to be
Canadian
citizens and
residents

(4) The majority of the directors shall at all times be Canadian citizens ordinarily resident in Canada.

New
election to
fill director-
ships in
such case

(5) Where more than the permitted number of non-residents and aliens are elected, a new election shall be held forthwith to fill all the directorships to which non-residents or aliens have been elected, and so on until the number of non-residents and aliens elected is reduced to or below the permitted number.

Remunera-
tion

(6) The remuneration of directors shall be fixed by the shareholders in general meeting. R.S.O. 1970, c. 254, s. 35 (3-6).

Provision
in case of
failure of
election

58. If at any time an election of directors is not held or does not take effect at the proper time, the corporation is not thereby dissolved, but the election may take place at any general meeting of the corporation duly called for that purpose, and the retiring directors shall continue in office until their successors are elected. R.S.O. 1970, c. 254, s. 36.

59. Vacancies occurring in the board of directors may be filled for the unexpired remainder of the term by the board from among the qualified shareholders of the corporation. R.S.O. 1970, c. 254, s. 37. ^{Interim vacancies}

60. The directors may lawfully exercise all the powers of the corporation except as to such matters as are directed by law or by the by-laws of the corporation to be transacted at a general meeting and have not been delegated to the directors by a general meeting as provided by section 53. R.S.O. 1970, c. 254, s. 38. ^{Powers of directors}

61.—(1) The directors shall from time to time elect from among themselves a president and one or more vice-presidents, and the directors shall in all things delegated to them act for and in the name of the corporation, and, subject to subsection (2), the concurrence of a majority of the directors present at any meeting is at all times necessary to any act of the board. ^{President and vice-president}

(2) Each director has one vote on any question before the board and, in the event of an equality of votes, the president or presiding officer has a second or casting vote. R.S.O. 1970, c. 254, s. 39. ^{Casting vote}

62.—(1) The shareholders of a corporation that has more than six directors may, at a general meeting called for the purpose, by resolution of two-thirds of the shareholders present in person or by proxy, authorize the directors to delegate any of their powers to an executive committee consisting of not fewer than three to be elected by the directors from their number. ^{Executive committee}

(2) A committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed upon them by such resolution or by the directors. ^{Committee's powers}

(3) Where directors delegate any of their powers to an executive committee, the powers so delegated shall be stated in writing and entered in the minute book of the corporation. R.S.O. 1970, c. 254, s. 40. ^{Delegated powers to be recorded in minute book}

63. In addition to the general powers of delegation authorized by section 62, the shareholders of a corporation may, at a general meeting called for the purpose, by resolution of two-thirds of the shareholders present in person or by proxy, authorize the directors to delegate, with or without the power of subdelegation, to the president of the corporation the exercise of any or all powers or authorities whether discretionary or otherwise, that may arise ^{Powers of president}

through the performance of the corporation of its responsibilities under any will, trust, deed, contract or instrument and the exercise of any such power by the president shall in all instances constitute a performance by the corporation of its responsibilities under any will, trust, deed, contract or instrument. 1974, c. 88, s. 7.

General
powers of
directors

64. Subject to this Act and to the Act or instrument constituting the corporation and to the by-laws of the corporation, the directors may,

- (a) use or cause to be used and affixed the seal of the corporation, and may affix or cause it to be affixed to any document or paper that in their judgment requires it;
- (b) make and enforce calls upon the shares of the respective shareholders;
- (c) declare the forfeiture of all shares on which calls are not paid;
- (d) make any payments and advances of money they consider expedient that are authorized to be made by or on behalf of the corporation, and enter into all contracts for the execution of the purposes of the corporation, and for all other matters necessary to the transaction of its affairs;
- (e) generally deal with, sell, exchange, lease and dispose of the lands, property and effects of the corporation in such manner as they consider expedient and conducive to the benefit of the corporation;
- (f) do and authorize, assent to or adopt all acts required for the due exercise of any further powers and authorities conferred by the Legislature. R.S.O. 1970, c. 254, s. 41.

Where
directors
have
reasonable
doubts as
to legality
of claim

65.—(1) Where the directors entertain reasonable doubts as to the legality of any claim to or upon any share, bond, debenture or obligation of the corporation, or to or upon any dividend, coupon or the proceeds thereof, they may apply to the Supreme Court, stating such doubt, for an order or judgment adjudicating upon such claim, and awarding such share, bond, debenture, obligation, dividend, coupon or proceeds to the person legally entitled to the same, and the court may restrain any action or proceeding against the corporation, or the directors or officers thereof, for the same subject-matter, pending the determination of the application.

(2) If the order or judgment of the court is obeyed, the corporation and the directors and officers are fully protected and indemnified against all actions, claims and demands in respect of the matters in question in such application and the proceedings thereupon. R.S.O. 1970, c. 254, s. 42.

Order of
court to be
indemnity
to company

66. The secretary or treasurer or secretary-treasurer or other officer of the corporation may be styled "Manager", and, when the officer is also a director, he may be styled "Managing Director". R.S.O. 1970, c. 254, s. 43.

Manager
and
managing
director

67. Every officer or other person appointed to any office in anywise concerning the receipt, safe keeping or proper application of money shall furnish security according to the by-laws of the corporation and to the satisfaction of the directors for the just and faithful execution of the duties of his office, and any person entrusted with the performance of any other service may be required by the directors to furnish similar security. R.S.O. 1970, c. 254, s. 44.

Certain
persons in
service of
corporation
to furnish
security

68. The directors shall not declare or pay any dividend or bonus when the corporation is insolvent, or that renders the corporation insolvent or diminishes its capital; and if any director, present when any such dividend or bonus is declared, forthwith, or if any director then absent, within twenty-four hours after he becomes aware thereof and is able to do so, enters his written protest against the same, and within eight days thereafter notifies the Registrar in writing of his protest, the director may thereby, but not otherwise, exonerate himself from liability. R.S.O. 1970, c. 254, s. 45.

Liability of
directors
declaring a
dividend
when
corporation
is insolvent,
etc.

69.—(1) The directors of any corporation are jointly and severally liable to its labourers, servants and apprentices for all debts not exceeding one year's wages due for services performed for the corporation while they are such directors.

Liability of
directors
for wages

(2) A director is not liable under subsection (1) unless,

Where no
liability

- (a) the corporation has been sued for the debt within one year after it has become due and execution has been returned unsatisfied in whole or in part; or
- (b) the corporation has, within that period, gone into liquidation or has been ordered to be wound up and the claim for such debt has been duly filed and proved,

and unless he is sued for such debt while a director or within one year after he has ceased to be a director.

Liability for
amount
unsatisfied
on execution

(3) If execution has so issued, the amount recoverable against the director is the amount remaining unsatisfied on the execution.

On payment,
director
entitled to
assignment
of judgment,
etc.

(4) If the claim for such debt has been proved in liquidation or winding-up proceedings, a director, upon payment of the debt, is entitled to any preference that the creditor paid would have been entitled to, and, where a judgment has been recovered, he is entitled to an assignment of the judgment. R.S.O. 1970, c. 254, s. 46.

SHARES, CALLS ON CAPITAL STOCK

Calling in
instalments

70.—(1) The directors may call in and demand from the shareholders the amount unpaid on shares by them subscribed or held at such times and places and in such payments or instalments as the special Act, letters patent, supplementary letters patent or this Act or the by-laws of the corporation require or allow, and interest accrues upon the amount of any unpaid call from the day appointed for payment thereof.

Demand
to state
liability to
forfeiture

(2) The demand shall state that in the event of non-payment the shares in respect of which the call was made will be liable to be forfeited.

Forfeiture
of shares

(3) If after the demand any call is not paid in accordance therewith, the directors, by resolution duly recorded in their minutes, may summarily forfeit any shares whereon such payment is not made, and they thereupon become the property of the corporation and may be disposed of as, by by-law or otherwise, the corporation may determine, but such forfeiture does not relieve the shareholder of any liability to the corporation or to any creditor. R.S.O. 1970, c. 254, s. 47.

Liability of
shareholders

71. Every shareholder, until the whole amount of his shares has been paid up, is individually liable to the creditors of the corporation for an amount equal to that not paid up thereon, but is not liable to an action therefor by any creditor before an execution against the corporation has been returned unsatisfied in whole or in part, and the amount due on the execution, but not beyond the amount so unpaid on such shares, is the amount recoverable, with costs, against the shareholder. R.S.O. 1970, c. 254, s. 48.

Set-off

72. In any action under section 71, a shareholder may plead by way of defence, in whole or in part, any set-off that he could set up against the corporation, except a claim for unpaid dividend, or a salary or allowance as a president or a director of the corporation. R.S.O. 1970, c. 254, s. 49.

73. The par value of a share of capital shall be \$1 or any multiple thereof not exceeding \$100. R.S.O. 1970, c. 254, s. 50. Par value of shares

74.—(1) No person holding shares in the corporation as executor, administrator, guardian, committee of a mentally incompetent person, or trustee of or for any estate, trust or person named in the books of the corporation as being so represented by him, is personally subject to any liability as a shareholder, but the estate and funds in his hands are liable in like manner and to the same extent as the testator, intestate, ward or person interested in such trust fund would be if living and competent to hold the shares in his own name. Representatives, guardians or trustees not to be personally liable

(2) If the trust is for a living person, not under disability, such person also is liable as a shareholder. Liability of beneficiary

(3) If such testator, intestate, ward, mentally incompetent person or person so represented is not named in the books of the corporation, the executor, administrator, guardian, committee or trustee is personally liable in respect of such shares as if he held them in his own name as owner thereof. R.S.O. 1970, c. 254, s. 51. Where beneficiary, etc., not named, trustee, etc., liable

75.—(1) Except with the consent of the directors, no payment on account of capital stock shall be made in advance of calls thereon. Payments on shares in advance of calls

(2) In respect of any sum so paid, a shareholder is entitled to participate in any dividend declared, but it shall not bear interest and does not constitute a loan to or a debt of the corporation. Right to participate in dividends

(3) The shareholder is entitled to have any such advance payment credited to him *pro tanto* as against subsequent calls. R.S.O. 1970, c. 254, s. 52. To be credited as against subsequent calls

76. Subject to sections 80 and 83, no by-law shall be passed that in any way restricts the right of a holder of paid up shares to transfer them, but nothing in this section prevents the regulation of the mode of their transfer. R.S.O. 1970, c. 254, s. 53. Restrictions on transfer

77.—(1) In this section and sections 78 to 82, Interpretation

(a) “company” includes an association, partnership or other organization;

(b) “non-resident” means,

(i) an individual who is not ordinarily resident in Canada,

- (ii) a company incorporated, formed or otherwise organized elsewhere than in Canada,
 - (iii) a company that is controlled directly or indirectly by non-residents as defined in subclause (i) or (ii),
 - (iv) a trust established by a non-resident as defined in subclause (i), (ii) or (iii), or a trust in which non-residents as so defined have more than 50 per cent of the beneficial interest, or
 - (v) a company that is controlled directly or indirectly by a trust mentioned in subclause (iv);
- (c) "resident" means an individual, company or trust that is not a non-resident.

Associated
shareholder

(2) For the purposes of sections 78 to 82, a shareholder shall be deemed to be associated with another shareholder if,

- (a) one shareholder is a company of which the other shareholder is an officer or director;
- (b) one shareholder is a partnership of which the other shareholder is a partner;
- (c) one shareholder is a company that is controlled directly or indirectly by the other shareholder;
- (d) both shareholders are companies and one shareholder is controlled directly or indirectly by the same individual or company that controls directly or indirectly the other shareholder;
- (e) both shareholders are members of a voting trust where the trust relates to shares of a corporation; or
- (f) both shareholders are associated within the meaning of clauses (a) to (e) with the same shareholder.

Shares
held jointly

(3) For the purposes of sections 78 to 82, where a share of the capital stock of a corporation is held jointly and one or more of the joint holders thereof is a non-resident, the share shall be deemed to be held by a non-resident. R.S.O. 1970, c. 254, s. 54.

Limit on
shares held
by non-
residents

78.—(1) The directors of a corporation shall refuse to allow in the books referred to in section 91 the entry of a transfer of any share of the capital stock of the corporation to a non-resident,

- (a) if, when the total number of shares of the capital stock of the corporation held by non-residents exceeds 25 per cent of the total number of issued and outstanding shares of such stock, the entry of the transfer would increase the percentage of such shares held by non-residents;
- (b) if, when the total number of shares of the capital stock of the corporation held by non-residents is 25 per cent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the total number of such shares of stock held by non-residents to exceed 25 per cent of the total number of issued and outstanding shares of such stock;
- (c) if, when the total number of shares of the capital stock of the corporation held by the non-resident and by other shareholders associated with him, if any, exceeds 10 per cent of the total number of issued and outstanding shares of such stock, the entry of the transfer would increase the percentage of such shares held by the non-resident and by other shareholders associated with him, if any; or
- (d) if, when the total number of shares of the capital stock of the corporation held by the non-resident and by other shareholders associated with him, if any, is 10 per cent or less of the total number of issued and outstanding shares of such stock, the entry of the transfer would cause the number of such shares of stock held by the non-resident and by other shareholders associated with him, if any, to exceed 10 per cent of the issued and outstanding shares of such stock.

(2) Notwithstanding subsection (1), the directors of a corporation may allow in the books referred to in section 91 the entry of a transfer of any share of the capital stock of the corporation to a non-resident when it is shown to the directors on evidence satisfactory to them that the share was, immediately prior to the 17th day of June, 1970, held in the right of or for the use or benefit of the non-resident. Exception

(3) The directors of a corporation shall not allot, or allow the allotment of, any shares of the capital stock of the corporation to any non-resident in circumstances where, if the allotment to such non-resident were a transfer of those shares, the entry thereof in the books would be required, under subsection (1), to be refused by the directors. Allotment to non-resident

Penalty

(4) Default in complying with this section does not affect the validity of a transfer or allotment of a share of the capital stock of the corporation that has been entered in the books referred to in section 91, but every director or officer who knowingly authorizes or permits such default is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than one year, or to both such fine and imprisonment. R.S.O. 1970, c. 254, s. 55.

Voting by
non-residents

79.—(1) A non-resident shall not exercise the voting rights attached to shares of a corporation unless he is entered in the books of the corporation as a shareholder in respect of the shares.

Voting
rights of
nominees
suspended

(2) Where a resident holds shares of the capital stock of a corporation in the right of, or for the use or benefit of, a non-resident and in respect of which the non-resident is not entered in the books of the corporation as the holder, the resident shall not, either in person or by proxy or by a voting trust, exercise the voting rights pertaining to those shares.

Change of
status while
entered on
books

(3) Where a person or company who is a resident becomes a non-resident while entered on the books of a corporation as a shareholder and the number of shares of such person or company recorded in such books when added to those entered therein as owned by other non-residents exceed the limit set out in section 78, the person or company shall not exercise, directly, by proxy or by a voting trust, any voting rights in respect of its shares that exceed the limit set out in section 78.

Voting
rights
of single
non-resident
owner

(4) Notwithstanding subsections (1), (2) and (3), where any shares of the capital stock of a corporation are held in the name of or for the use or benefit of a non-resident, other than shares in respect of which the non-resident was entered in the books of the corporation before the 17th day of June, 1970 or is entered in the books under subsection 78 (2), no person shall, either as proxy or by a voting trust or in person, exercise the voting rights pertaining to such shares held by the non-resident or in his right or for his use or benefit, if the total of such shares so held, together with such shares held in the name or right of or for the use or benefit of,

(a) any shareholders associated with the non-resident;
or

(b) any persons who would, under subsection 77 (2), be deemed to be shareholders associated with the non-resi-

dent were such persons and the non-resident themselves shareholders,

exceed in number 10 per cent of the issued and outstanding shares of such stock.

(5) Every person who knowingly contravenes this section ^{Penalty} is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than one year, or to both such fine and imprisonment.

(6) If any provision of this section is contravened at a ^{Effect of} general meeting of the corporation, no proceeding, matter or ^{contra-} thing at that meeting is void by reason only of such contraven- ^{vention} tion, but any such proceeding, matter or thing is, at any time within one year from the day of commencement of the general meeting at which the contravention occurred, voidable at the option of the shareholders by a resolution passed at a special general meeting of the corporation. R.S.O. 1970, c. 254, s. 56.

80.—(1) The directors of a corporation may make such ^{By-laws} by-laws as they consider necessary to carry out the intent of sections 77 to 79 and in particular, but without restricting the generality of the foregoing, the directors may make by-laws,

- (a) requiring any person holding any share of the capital stock of the corporation to submit written declarations,
 - (i) with respect to the ownership of such share,
 - (ii) with respect to the place in which the shareholder and any person for whose use or benefit the share is held are ordinarily resident,
 - (iii) as to whether the shareholder is associated with any other shareholder, and
 - (iv) with respect to such other matters as the directors consider relevant for the purposes of sections 77 to 79;
- (b) prescribing the times at which and the manner in which any declarations required under clause (a) are to be submitted; and
- (c) requiring any person desiring to have a transfer of a share to him entered in the books referred to in

section 91 to submit such a declaration as may be required under this section in the case of a shareholder. R.S.O. 1970, c. 254, s. 57 (1); 1972, c. 101, s. 3.

Where
declaration
pending

(2) Where by or under any by-law made under subsection (1) any declaration is required to be submitted by any shareholder or person in respect of the transfer of any share, the directors may refuse to enter such transfer in the books referred to in section 91 until the required declaration has been completed and submitted.

Penalty

(3) Any person who makes any wilfully false or deceptive statement in a declaration required by a by-law made under subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than one year, or to both such fine and imprisonment. R.S.O. 1970, c. 254, s. 57 (2, 3).

Report
to the
Registrar

81. No transfers or issue of shares of a corporation shall be entered in the books maintained under section 91 until thirty days after notice thereof has been deposited with the Registrar, if,

- (a) the transfer or issue relates to 10 per cent or more of the issued shares of the corporation for the time being enjoying voting rights; or
- (b) the directors have reason to believe that the transfer or issue would result in a majority of the issued shares of the corporation for the time being enjoying voting rights being beneficially owned by any one person. 1972, c. 101, s. 4, *part*.

Liability of
directors

82. In determining, for the purposes of sections 77 to 81, whether a person is a resident or a non-resident, by whom a corporation is controlled or any other circumstances relevant to the performance of their duties under those sections, the directors of the corporation and any other person acting as proxy for a shareholder of the corporation may rely upon any statement made in any declarations made under section 80 or rely upon their own knowledge of the circumstances; and the directors and any such person are not liable in any action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge. 1972, c. 101, s. 4, *part*; 1974, c. 88, s. 8.

When
directors'
consent
required

83.—(1) No transfer of shares, the whole amount whereof has not been paid, shall be made without the consent of the directors.

(2) Where any such transfer is made with the consent of the directors to a person who is not apparently of sufficient means to fully pay up such shares, the directors are, subject to subsection (3), jointly and severally liable to the creditors of the corporation in the same manner and to the same extent as the transferring shareholder, but for such transfer, would have been.

Directors' liability

(3) If any director present when such a transfer is allowed forthwith, or, if any director then absent, within twenty-four hours after he becomes aware of such transfer and is able to do so, enters his written protest against the transfer, and within eight days thereafter notifies the Registrar in writing of his protest, the director may thereby, but not otherwise, exonerate himself from liability.

Relief from liability by entering protest

(4) Where a share upon which a call is unpaid is transferred with the consent of the directors, the transferee is liable for the call to the same extent and with the same liability to forfeiture of the share if the call remains unpaid as if he had been the holder when the call was made, and the transferor remains liable also for the call until it has been paid.

Liability where call remains unpaid

(5) Where the letters patent, supplementary letters patent or by-laws of a corporation confer the power on the directors, they may decline to register a transfer of shares belonging to a shareholder who is indebted to the corporation. R.S.O. 1970, c. 254, s. 60.

Where transferor indebted

84. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding 25 cents, and on such terms, if any, as to evidence and indemnity as the directors think fit. R.S.O. 1970, c. 254, s. 61.

Lost certificate

85. No transfer of shares, unless made by sale under execution or under the order or judgment of a competent court, is, until entry thereof has been duly made, valid for any purpose whatever, save only as exhibiting the rights of the parties thereto towards each other, and, if absolute, as rendering the transferee and the transferor jointly and severally liable to the corporation and its creditors until entry thereof has been duly made in the books of the corporation. R.S.O. 1970, c. 254, s. 62.

Transfer valid only after entry

86.—(1) The directors may, for the purpose of notifying the person registered therein as owner of such shares, refuse to allow the entry in any such books of a transfer of shares, and in that event shall forthwith give notice to the owner of the application for the entry of the transfer.

Transferor may be notified

Owner
may lodge
caveat

(2) The owner may lodge a caveat against the entry of the transfer and thereupon the transfer shall not be made for a period of forty-eight hours.

Transfer
may be
entered if
no order
served

(3) If no order of a competent court enjoining the entry of the transfer is served upon the corporation within one week from the giving of the notice or the expiration of the period of forty-eight hours, whichever last expires, the transfer may be entered.

Corporation
not liable
if section
complied
with

(4) Where a transfer is entered after the proceedings mentioned in this section, the corporation is, in respect of the shares so transferred, free from liability to a person whose rights are purported to be transferred, but without prejudice to any claim that the transferor may have against the transferee. R.S.O. 1970, c. 254, s. 63.

Deposit of
foreign
probate,
letters of
adminis-
tration, etc.,
with officer
of cor-
poration

87.—(1) Where,

- (a) a transmission of shares or other securities of a corporation takes place by virtue of any testamentary act or instrument, or in consequence of an intestacy; and
- (b) the probate of the will or letters of administration or document testamentary, or other judicial or official instrument under which the title, whether beneficial or as trustee, or the administration or control of the personal estate of the deceased is claimed to vest, purports to be granted by a court or authority in Canada, or in the Commonwealth, or in any foreign country,

the probate of the will or the letters of administration or the document testamentary or, in the case of a transmission by notarial will in the Province of Quebec, a copy thereof duly certified in accordance with the laws of Quebec, or the other judicial or official instrument, or an authenticated copy thereof or official extract therefrom under the seal of the court or other authority, without any proof of the authenticity of the seal or other proof whatever, shall be produced, and a true copy thereof, together with a declaration in writing showing the nature of the transmission, signed and executed by such one or more of the persons claiming by virtue thereof as the corporation requires, or, if any such person is a company, signed and executed by an officer thereof, shall be deposited with an officer of the corporation or other person authorized by the directors of the corporation to receive them.

(2) Such production and deposit is sufficient justification and authority to the directors for paying the amount or value of any dividend, coupon, bond, debenture, deposit, guaranteed investment certificate, obligation or share, or transferring, or consenting to the transfer of any bond, debenture, deposit, guaranteed investment certificate, obligation or share, in pursuance of, and in conformity to such probate, letters of administration or other such document aforesaid. R.S.O. 1970, c. 254, s. 64, *revised*.

Transmis-
sion of
interest
on death

INCREASE OR DECREASE OF CAPITAL STOCK AND SUBDIVISION OF SHARES

88.—(1) The directors of a corporation may by by-law provide for the increase or decrease of its capital and, where the corporation has been registered under this Act for a continuous period of five years, for the increase of its capital by authorizing no par value shares.

Increase or
decrease of
capital

(2) The by-laws shall state the number, class and par value of shares with par value and for shares without par value the stated amount as consideration for which such shares might be issued, by which the capital is so increased or decreased.

Contents of
by-laws

(3) The directors may by by-law provide upon the terms therein stated for the conversion of partly paid-up shares into paid-up shares, for subdividing shares, altering the par value of shares, and subject to section 89 for the conversion of its shares. 1973, c. 128, s. 9.

Conversion

(4) The liability of shareholders to persons who, at the time the capital is increased or decreased or shares are converted or altered, are creditors of the corporation remains as though the capital had not been increased or decreased or the shares had not been converted or altered.

Rights of
creditors
preserved

(5) Where a by-law under this section would have the effect of increasing or decreasing the capital of a corporation or altering the liability of any shareholder thereof, a copy of the proposed by-law shall be delivered to the Registrar and no such by-law shall be passed for at least one month thereafter.

Copy to
Registrar

(6) No by-law under this section has any force or effect until it has been submitted to a general meeting of the shareholders of the corporation duly called for that purpose at which the holders of at least 50 per cent of the issued shares of the corporation for the time being carrying voting rights

Confirmation
of by-law by
shareholders
and by order
in council

are present in person or represented by proxy and is confirmed thereat, with or without variation, by a resolution passed by the affirmative votes of the holders of at least two-thirds of the shares represented at the meeting, and has thereafter been confirmed by order of the Lieutenant Governor in Council.

Notice to
shareholders

(7) Notice of such general meeting of the shareholders shall be given as provided in subsection 28 (2) and such additional notice as the Registrar may direct.

When con-
firmation
may be
granted

(8) The Lieutenant Governor in Council may grant the confirmation required by subsection (6) if the Lieutenant Governor in Council is satisfied of the *bona fide* character of the changes provided for in the by-law, unless it appears that the confirmation of the by-law would not be in the public interest.

Varying
by-law on
confirmation

(9) With the consent of the corporation, evidenced by a resolution of the directors, the changes provided for in any by-law under this section may be varied or amended by the confirming order in council, and may be made subject to such conditions as the Lieutenant Governor in Council considers proper.

Evidence of
confirmation

(10) A copy of the order in council confirming a by-law under this section, certified by the Clerk of the Executive Council, shall be received in evidence as *prima facie* proof of the confirmation.

Effective
date of
by-law

(11) A by-law under this section becomes effective on the date specified in the confirming order in council. R.S.O. 1970, c. 254, s. 65 (4-11).

Prohibition
re purchase
of common
shares

(12) A corporation may purchase its own common shares if the purchase is made,

(a) for the purpose of eliminating fractions of shares;
or

(b) for the purpose of collecting or compromising
indebtedness to the corporation.

Not to
redeem if
insolvent

(13) A corporation shall not redeem or purchase its own preference shares if,

(a) the corporation is insolvent or if the redemption or purchase would render the corporation insolvent; or

(b) the effect of the redemption or purchase would reduce the corporation's unimpaired capital and reserve to

an amount that would place the corporation in contravention of section 109 or 118.

(14) The authorized and issued capital of the corporation is decreased when it redeems or purchases its own preference shares by the number and par value of the shares so purchased or redeemed and subsections (1) to (3) and (5) to (12) do not apply thereto. 1972, c. 101, s. 5.

89.—(1) The by-laws of a corporation may provide for the conversion of shares with par value into other shares with par value provided that the aggregate par value of the shares being converted is equal to the aggregate par value of the shares into which they are converted.

(2) Where, in accordance with the by-laws, shares with par value are converted into shares without par value, the issued capital of the corporation attributable to the shares resulting from the conversion shall be equal to the aggregate par value of the shares converted.

(3) Where the by-laws provide for the conversion of shares without par value into shares with par value, no such shares shall be converted unless that part of the issued capital attributable to the shares being converted is equal to the aggregate par value of the shares resulting from the conversion. 1973, c. 128, s. 10, *part*.

90.—(1) Where all the shares of a corporation are with par value, its issued capital shall be expressed in Canadian currency, and is an amount equal to the total of the products of the number of issued shares of each class multiplied by the par value thereof less such decreases in the issued capital as from time to time have been effected by the corporation in accordance with this Act.

(2) Where the shares of a corporation are without par value or where part of the shares of a corporation are with par value and part are without par value, its issued capital shall be expressed in Canadian currency, and in an amount equal to the total of the products of the number of issued shares of each class with par value multiplied by the par value thereof, together with the amount of the consideration for which the shares without par value from time to time outstanding were issued and together with such amounts as from time to time by by-law of the corporation may be transferred thereto and less such decreases in the issued capital as from time to time have been effected by the corporation in accordance with this Act. 1973, c. 128, s. 10, *part*.

BOOKS

Record
books to
be kept, and
contents
thereof

91.—(1) Every corporation having its head office in Ontario shall cause the secretary, or some other officer specially charged with the duty, to keep a book or books wherein shall be kept recorded,

- (a) a copy of the letters patent and of any supplementary letters patent issued to the corporation and, if incorporated by special Act, a copy of such Act, and the by-laws of the corporation duly authenticated;
- (b) the names, post office addresses, so far as known, of all persons who are or have been directors of the corporation, with the date on which each became and ceased to be a director;
- (c) the names, alphabetically arranged, of all persons who are shareholders of the corporation;
- (d) the post office address, so far as known, of every such person while he is a shareholder;
- (e) the number of shares held by each shareholder;
- (f) the amounts paid in, and remaining unpaid, on the shares of each shareholder; and
- (g) the date and other particulars of all transfers of shares in the order in which they were made.

Books to be
kept at
head office

(2) Such books shall be kept at the head office of the corporation.

Offence

(3) Every director, officer or employee of a corporation who removes or assists in removing such books from Ontario or who otherwise contravenes the provisions of this section is guilty of an offence and on conviction is liable to a fine of \$200.

Relief from
operation
of section

(4) Upon necessity therefor being shown and adequate assurance given that such books may be inspected in Ontario by any person entitled thereto after application for such inspection to the Registrar, the Lieutenant Governor in Council may relieve any corporation from the provisions of subsection (2) upon such terms as he sees fit.

Books to be
open for
inspection

(5) Such books shall, without the payment of any fee or charge, be open during business hours for inspection by any shareholder, depositor, debenture holder or holder of a

guaranteed investment certificate, by himself, his agent or his personal representative, and any such person may make extracts therefrom.

(6) Every such corporation that neglects to keep such book or books is liable to forfeit its registry under this Act, and, if a provincial corporation, is also liable to forfeit its corporate franchise and rights. ^{Forfeiture for neglect}

(7) No auditor, director, officer or servant of the corporation shall knowingly make or assist in making any untrue entry in any such book, or shall refuse or neglect to make any proper entry therein. ^{False entries}

(8) Every person contravening this section is liable in damages for all loss or injury that any person interested may have sustained thereby. ^{Liability for damages} R.S.O. 1970, c. 254, s. 66.

92.—(1) Any person, upon payment of a reasonable charge therefor and upon filing with the corporation or its agent the affidavit referred to in subsection (2), may require a corporation, or its transfer agent, to furnish within ten days from the filing of the affidavit a list setting out the names alphabetically arranged of all persons who are shareholders of the corporation, the number of shares owned by each such person and the address of each such person as shown on the records of the corporation made up to a date not more than ten days before the date of filing the affidavit. ^{Where list of shareholders to be furnished}

(2) The affidavit referred to in subsection (1) shall be made by the applicant and shall be in the following form: ^{Form of affidavit}

FORM OF AFFIDAVIT

Province of Ontario
County of

In the Matter of
(Insert name of corporation)

I, of the of
in the of
make oath and say:

(Where the applicant is a body corporate, indicate office and authority of deponent).

1. I hereby apply for a list of the shareholders of the above-named corporation.
2. I require the list of shareholders only for purposes connected with the above-named corporation.
3. The list of shareholders and the information contained therein will be used only for purposes connected with the above-named corporation.

Sworn, etc.

Idem, where
applicant
a body
corporate

(3) Where the applicant is a body corporate, the affidavit shall be made by the president or other officer authorized by resolution of the board of directors of the body corporate.

Use
of list

(4) No person shall use a list of all or any of the shareholders of a corporation obtained under this section,

(a) for the purpose of delivering or sending to all or any of the shareholders advertising or other printed matter relating to securities other than the securities of the corporation; or

(b) for any purpose not connected with the corporation.

Furnishing
list

(5) Every corporation or transfer agent shall furnish a list in accordance with subsection (1) when so required.

Purposes
connected
with
corporation
defined

(6) Purposes connected with the corporation include any effort to influence the voting of shareholders at any meeting thereof, any offer to acquire shares in the corporation or any effort to effect an amalgamation or reorganization. 1973, c. 128, s. 11.

Register of
securities

93. Every corporation shall keep a register or registers of all securities held by the corporation. R.S.O. 1970, c. 254, s. 67.

Application
of s. 91 (6-8)

94. Subsections 91 (6) to (8) apply to the registers prescribed by section 93. R.S.O. 1970, c. 254, s. 68.

Property in
books of
account

95.—(1) The books used by an auditor, officer, collector or agent for verifying or recording money received for the corporation are the property of the corporation.

Idem

(2) Neither the foregoing persons, nor any solicitor, counsel or other person shall have in or upon these or any other of the books of account or record of the corporation any ownership or proprietary right or any right of lien.

Offence

(3) Every person who, in contravention of this section, withdraws, withholds or detains any of such books from the possession or control of the directors, or from the receiver or liquidator of the corporation, is guilty of an offence. R.S.O. 1970, c. 254, s. 69.

After
decease,
bankruptcy,
etc., of
officer,
books, etc.,
to be
delivered to
corporation

96. Where a person who has been but has ceased to be a director, manager, auditor, officer, agent, collector, servant or employee of a corporation, or any other person unlawfully retains possession of any accounts, books, money,

securities, papers, matters or things that are the property of the corporation, a judge of the Supreme Court or of a county or district court, on application of the corporation or any depositor or shareholder therein or of the Registrar, and upon notice to the person affected, may order that such accounts, books, money, securities, papers, matters and things be forthwith delivered to such person as the judge directs and in default that the person so retaining possession shall be imprisoned for such period as the judge directs or until he complies with the direction of the order, and may authorize the sheriff of any county or district in which the same may be found forthwith to seize and take such accounts, books, money, securities, papers, matters and things and deliver them to the person to whom they have been directed to be delivered. R.S.O. 1970, c. 254, s. 70.

97.—(1) In any action or proceeding against a corporation, the books mentioned in sections 91 and 93 are *prima facie* evidence of the facts purported to be thereby stated. Books as evidence

(2) The books of a corporation are *prima facie* evidence Idem of the truth of all matters purporting to be therein recorded as between the corporation and its shareholders and as between its shareholders. R.S.O. 1970, c. 254, s. 71.

AUDIT, STATEMENT TO SHAREHOLDERS

98.—(1) The shareholders of a corporation at their first general meeting shall appoint one or more auditors to hold office until the close of the first annual meeting and, if the shareholders fail to do so, the directors shall forthwith make such appointment or appointments. Auditors

(2) The shareholders shall at each annual meeting appoint one or more auditors to hold office until the close of the next annual meeting and, if an appointment is not so made, the auditor in office continues in the office until a successor is appointed. Appointment annually

(3) The directors may fill any casual vacancy in the office of auditor, but, while such vacancy continues, the surviving or continuing auditor, if any, may act. Casual vacancy

(4) The shareholders may, by resolution passed by a majority of the votes cast at a general meeting duly called for the purpose, remove an auditor before the expiration of his term of office, and shall by a majority of the votes cast at that meeting appoint another auditor in his stead for the remainder of his term. Removal of auditor

Notice to
auditor

(5) Before calling a general meeting for the purpose specified in subsection (4), the corporation shall, fifteen days or more before the mailing of the notice of the meeting, give to the auditor,

(a) written notice of the intention to call the meeting, specifying therein the date on which the notice of the meeting is proposed to be mailed; and

(b) a copy of all material proposed to be sent to shareholders in connection with the meeting.

Right of
auditor to
make repre-
sentations

(6) The auditor has the right to make to the corporation, three days or more before the mailing of the notice of the meeting, representations in writing concerning his proposed removal as auditor, and the corporation, at its expense, shall forward with the notice of the meeting a copy of such representations to each shareholder entitled to receive notice of the meeting.

Remunera-
tion

(7) The remuneration of an auditor appointed by the shareholders shall be fixed by the shareholders, or by the directors if they are authorized so to do by the shareholders, and the remuneration of an auditor appointed by the directors shall be fixed by the directors.

Appointment
by Registrar

(8) If for any reason no auditor is appointed, the Registrar may appoint one or more auditors to hold office until the close of the next annual meeting and fix the remuneration to be paid by the corporation for his or their services.

Notice of
appointment

(9) The corporation shall give notice in writing to an auditor of his appointment forthwith after the appointment is made.

Notice to
auditor of
proposal to
appoint
another

(10) A person, other than an incumbent auditor, may not be appointed auditor at an annual meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the corporation not less than fifteen days before the meeting at which the auditor is to be appointed and, where such notice is given, the corporation shall send a copy of the notice to the incumbent auditor and to the person whom it is intended to nominate and shall give notice thereof to the shareholders in the manner specified in section 28.

Right of
incumbent
auditor to
make repre-
sentations

(11) The incumbent auditor has the right to make to the corporation, three days or more before the mailing of the notice of the meeting, representations in writing concerning the proposal not to reappoint him as auditor, and the corporation, at its expense, shall forward with the notice of the

meeting a copy of such representations to each shareholder entitled to receive notice of the meeting. R.S.O. 1970, c. 254, s. 72.

99.—(1) In this section, “related person” means,

Interpre-
tation

- (a) any spouse, son or daughter of that person;
- (b) any relative of such person or of his spouse, other than a relative referred to in clause (a), who has the same home as such person; or
- (c) any body corporate of which such person and any of the persons referred to in clause (a) or (b) or the partner or employer of such person, either alone or in combination, beneficially owns, directly or indirectly, equity shares carrying more than 50 per cent of the voting rights attached to all equity shares of the body corporate for the time being outstanding.

(2) An auditor of a registered corporation shall be an accountant. Who may be auditor

(3) No person shall be appointed auditor of a registered corporation if he or any member of his firm is a shareholder, director, officer or employee of such corporation, or of any company in which such corporation has invested its funds under section 180 or 183. Persons disqualified as auditors

(4) A registered corporation shall, where possible, cause its auditor or one of its auditors to be appointed auditor of any company in which such corporation has invested its funds under section 180 or 183 and where such appointment is not possible the corporation shall inform the Registrar of the circumstances that prevent such appointment. Auditor appointment

(5) Subsection (3) does not apply to a person, partner, employer or related person who is not empowered to decide whether securities of the registered corporation or its holding company, as the case may be, are to be beneficially owned, directly or indirectly, by him, or if he is not entitled to vote in respect thereof. Application of subs. (3)

(6) Where, on the 13th day of November, 1970 an auditor Idem or his partner, employer or related person owns securities as set out in subsection (3), notwithstanding subsection (3), he may for a period of two years from the 13th day of November, 1970 continue to act as auditor if he discloses in the report required under subsection 100 (2) that he or his partner, employer or related person so owns such securities but, at the expiration of such period

he shall cease to act as auditor unless he or his partner, employer or related person, as the case may be; has disposed of such securities.

Auditors
not to be
appointed
receivers, etc.

(7) No person shall be appointed a receiver or a receiver and manager or liquidator of any registered corporation of which he or a related person is the auditor or has been auditor within the two years preceding his appointment as receiver or receiver and manager or liquidator.

Trustee in
bankruptcy
not to be
appointed
auditor
R.S.C. 1970,
c. B-3

(8) No person who is appointed a trustee of the estate of a registered corporation under the *Bankruptcy Act* (Canada) or a related person shall be appointed or act as auditor of the registered corporation. R.S.O. 1970, c. 254, s. 73.

Auditor's
examination

100.—(1) The auditor shall make such examination as will enable him to make the reports required under subsection (2).

Auditor's
reports

(2) The auditor of a registered corporation shall make reports,

- (a) to the shareholders on the financial statement of the corporation referred to in sections 28 and 101; and
- (b) to the Registrar on the annual statement filed with the Registrar under section 196.

Idem

(3) In the reports required by subsection (2), the auditor shall state,

- (a) whether he has obtained all the information and explanations he has required;
- (b) whether in the opinion of the auditor the financial statement presents fairly the financial position of the corporation as at the date of the balance sheet included therein and the results of the operations of the corporation for the financial period ended on that date; and
- (c) whether the financial statements are in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding period, if any,

in accordance with the information he has obtained and the explanations given to him and as shown by the books of the corporation.

Qualified
report

(4) When the opinion expressed in a statement under subsection (2) is not an unqualified opinion, the auditor shall state in his report the reasons therefor.

(5) Where facts come to the attention of the officers or directors which, if known prior to the date of the last annual general meeting of shareholders, would have required a material adjustment to the financial statement presented to such meeting, the officers or directors shall communicate such facts to the auditor who reported to the shareholders under this section and the directors shall forthwith amend the financial statement and send it to the auditor.

Facts
discovered
after
statement

(6) On the receipt of facts furnished under subsection (5) or from any other source, the auditor shall, if in his opinion it is necessary, amend his report in respect of the financial statement in accordance with subsection (4) and the directors or, if they fail to do so within a reasonable time, the auditor shall mail such amended report to the shareholders.

Amendment
of auditor's
report

(7) The auditor in his reports shall make such statements as he considers necessary,

Auditor's
statement

- (a) if the corporation's financial statement or annual statement is not in agreement with its accounting records;
- (b) if the corporation's financial statement or annual statement is not in accordance with any requirements of this Act or as prescribed by the Registrar; or
- (c) if proper accounting records have not been kept so far as appears from his examination. R.S.O. 1970, c. 254, s. 74 (1-7).

(8) Where a corporation is a holding corporation and the financial statement to be presented to its shareholders is not on a consolidated basis, the auditor in his report to the shareholders of the corporation shall state the additional amount, if any, that in his opinion is necessary to make full provision for,

Statement
not on a
consolidated
basis

- (a) where there is only one subsidiary of the corporation, the corporation's proportion of any loss of its subsidiary since it acquired shares of the subsidiary;
- (b) where there is more than one such subsidiary, the corporation's proportion of the aggregate losses of its subsidiaries since it acquired shares of the subsidiaries that is in excess of its proportion of any undistributed profits of its subsidiaries since it acquired shares of the subsidiaries. 1972, c. 101, s. 6; 1974, c. 88, s. 9.

(9) The auditor of a corporation has right of access at all times to all records, documents, accounts and vouchers of the corporation and is entitled to require from the directors, officers

Right of
access, etc.

and employees of the corporation such information and explanations as in his opinion are necessary to enable him to report as required by subsection (2).

Idem

(10) The auditor of a corporation has right of access at all times to all records, documents, accounts and vouchers of all subsidiaries of the corporation and is entitled to require from the directors, officers and employees of each such subsidiary such information and explanations as in his opinion are necessary to enable him to report as required by subsection (2).

Idem

(11) Where a subsidiary of the corporation is a body corporate to which this Act does not apply, the holding corporation shall make available to its auditor the records, documents, accounts and vouchers of that subsidiary, and shall require the directors, officers and employees of that subsidiary to make available to its auditor the information and explanations required by subsection (9).

Auditor's
right to
attend
meetings

(12) The auditor of a corporation is entitled to attend any meeting of the shareholders of the corporation, to receive all notices and other communications relating to any such meeting that a shareholder is entitled to receive and to be heard at any such meeting that he attends on any part of the business that concerns him as auditor.

Shareholder
may require
auditor's
attendance
at share-
holders'
meetings

(13) Any shareholder of a corporation, whether or not he is entitled to vote at meetings of shareholders, may, by notice in writing to the corporation given five days or more before any meeting of shareholders, require the attendance of the auditor at such meeting at the corporation's expense, and in such event the auditor shall attend the meeting.

Auditor
may attend
shareholders'
meetings

(14) At any meeting of shareholders the auditor, if present, shall answer inquiries directed to him concerning the basis upon which he formed the opinion stated in the report made under subsection (2).

Registrar
may enlarge
scope

(15) The Registrar may direct that the scope of the annual audit of a corporation be enlarged or extended and may appoint for such purpose an accountant as an auditor of the corporation and the expenses incurred by reason of such appointment are payable by the corporation. R.S.O. 1970, c. 254, s. 74 (8-14).

Annual
financial
statement

101.—(1) The directors shall lay before each annual meeting of shareholders,

(a) a financial statement for the period that commenced on the date of incorporation and ended not more than

six months before the annual meeting or, if the corporation has completed a financial year, that commenced immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, as the case may be, made up of,

- (i) a statement of profit and loss for such period,
- (ii) a statement of retained earnings, or surplus for such period,
- (iii) a statement of general reserve,
- (iv) a statement of accumulated reserves for investments,
- (v) a balance sheet as at the end of such period,

and if the Registrar so directs, showing in each case the corresponding figures for the last preceding financial period of the corporation;

(b) the report of the auditor to the shareholders;

(c) such further information respecting the financial position of the corporation, as its letters patent, supplementary letters patent, or by-laws, require.

(2) The Lieutenant Governor in Council may make regulations prescribing the form and content of the financial statement required under subsection (1). ^{Form}

(3) The report of the auditor to the shareholders shall be read at the annual meeting and shall be open to inspection at the meeting by any shareholder. ^{Auditor's report to be read}

(4) The financial statement shall be approved by the board of directors and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign and the auditor's report shall be attached to or accompany the financial statement. ^{Approval by directors}

(5) A corporation shall, at least ten days before the date of the annual meeting of the shareholders, send by prepaid mail to each shareholder entitled to notice of the meeting at his latest address shown on the records of the corporation a copy of the financial statement and a copy of the auditor's report. ^{Copy to shareholders}

Copy to
debenture
holders

(6) A copy of the financial statement and auditor's report shall be mailed or delivered without charge to any holder of a debenture or guaranteed investment certificate of the corporation or to any depositor of the corporation who requests the same. R.S.O. 1970, c. 254, s. 75.

Audit
committee

102.—(1) The directors of a corporation shall elect annually from among their number a committee to be known as the audit committee to be composed of not fewer than three directors, of whom the majority shall not be officers or employees of the corporation or an affiliate of the corporation, to hold office until the next annual meeting of the shareholders.

Chairman

(2) The members of the audit committee shall elect a chairman from among their number.

Review

(3) The corporation shall submit the financial statement to the audit committee for its review and the financial statement shall thereafter be submitted to the board of directors.

Hearing of
auditor

(4) The auditor has the right to appear before and be heard at any meeting of the audit committee and shall appear before the audit committee when required to do so by the committee.

Idem

(5) Upon the request of the auditor, the chairman of the audit committee shall convene a meeting of the committee to consider any matter the auditor believes should be brought to the attention of the directors or shareholders. R.S.O. 1970, c. 254, s. 76.

Exemption

(6) This section does not apply to a loan corporation that does not accept money by way of deposit or issue debentures. 1972, c. 101, s. 7.

BORROWING POWERS OF LOAN CORPORATIONS

Application
of ss. 104-109

103. Sections 104 to 109 apply to every loan corporation incorporated under the law of Ontario or having its head office in Ontario and also to every loan corporation borrowing in Ontario by taking deposits or issuing debentures or like obligations. R.S.O. 1970, c. 254, s. 77.

Amount of
capital
subscribed
and paid in
before
borrowing

104.—(1) No loan corporation shall exercise any of its borrowing powers unless and until it has a capital paid in and unimpaired of at least \$1,000,000. R.S.O. 1970, c. 254, s. 78 (1); 1974, c. 88, s. 10 (1).

(2) Subject to the qualifications, limitations and restrictions contained in this Act, a registered loan corporation, if authorized by by-law, may, ^{Borrowing powers}

- (a) borrow money by way of loan or on deposit at such rates of interest and upon such terms as the directors may from time to time determine;
- (b) issue subordinated notes to evidence any such borrowing referred to in clause (a) subject to regulations respecting the issuance of subordinated notes;
- (c) issue debentures, bonds and other securities to evidence any such borrowing; and
- (d) charge, mortgage, hypothecate or pledge all or any of the real or personal property of the corporation present or future, including book debts and unpaid calls, rights, powers, franchises and undertaking, to secure any such debentures, bonds or other securities or any money borrowed. R.S.O. 1970, c. 254, s. 78 (2); 1974, c. 88, s. 10 (2).

(3) No by-law for any of the purposes mentioned in subsection (2) takes effect unless such by-law, ^{Confirming by-law}

- (a) has been passed by the affirmative vote of the holders of two-thirds of the shares for the time being carrying voting rights and present or represented by proxy at a general meeting of the shareholders of the corporation duly called to consider such by-law; or
- (b) has been passed by the directors and confirmed at a general meeting of the shareholders of the corporation duly called to consider such by-law by resolution passed by the affirmative vote of the holders of at least two-thirds of the shares for the time being carrying voting rights present or represented by proxy at such meeting. R.S.O. 1970, c. 254, s. 78 (3).

(4) Subsection (1) applies to loan corporations registered on or after the 1st day of January, 1968 and subsection 71 (1) of *The Loan and Trust Corporations Act*, being chapter 222 of the Revised Statutes of Ontario, 1960, as re-enacted by subsection 5 (1) of *The Loan and Trust Corporations Amendment Act, 1966*, ^{Application of subs. (1)} 1966, c. 81 applies to loan corporations registered before the 1st day of January, 1968. 1972, c. 101, s. 8.

Ranking of
holders of
deposits
and
debentures

105. Subject to the terms and conditions of any charge, mortgage, hypothec or pledge given by a registered loan corporation to secure any particular borrowing, the holders of deposits and the holders of debentures, bonds or other securities rank *pari passu* on the assets of such corporation and are ordinary creditors thereof. R.S.O. 1970, c. 254, s. 79.

Denomin-
ation and
term of
debentures

106. Debentures, bonds or other securities of a registered loan corporation shall,

- (a) be for such individual amounts not less than \$100;
- (b) be payable in such currency and at such place;
- (c) mature on such date;
- (d) bear such rate of interest; and
- (e) in all other respects be in such form and terms,

as the directors of the corporation shall from time to time determine. R.S.O. 1970, c. 254, s. 80; 1972, c. 101, s. 9.

Features
of sub-
ordinated
note

107.—(1) A subordinated note,

- (a) shall be issued only on application to the head office of the corporation;
- (b) shall have a denomination of \$50,000 or more, or such other amount as may be prescribed by the Lieutenant Governor in Council by regulation;
- (c) shall be clearly designated on its face and in its terms as a subordinated note;
- (d) shall have a fixed term to maturity of seven years or more, but with the approval of the Registrar may be for a lesser term or include a provision making it subject to earlier redemption at the option of the corporation; and
- (e) shall be evidenced by a certificate, and the form and contents of such certificate are subject to the prior approval of the Registrar.

References
to subor-
dinated
notes

(2) The corporation, or any person acting on its behalf, shall not, in any offering circular, advertisement, correspondence or literature relating to a subordinated note issued or to be issued by the corporation refer to such note otherwise than as a subordinated note. 1974, c. 88, s. 11.

108.—(1) Every registered loan corporation shall at all times maintain, Reserves
required on
deposits

- (a) cash on hand or on deposit in a chartered bank or other depository approved by the Registrar;
- (b) unencumbered debentures, bonds, stocks or other securities of or guaranteed by the Government of Canada or of or guaranteed by any province of Canada;
- (c) loans payable on demand and fully secured by securities referred to in clause (b); and
- (d) subject to the approval of the Registrar and to such conditions as the Registrar may impose, a credit from chartered banks in Canada,

to an aggregate of at least 20 per cent of the amount of deposits and of obligations of the corporation payable in less than 100 days. R.S.O. 1970, c. 254, s. 81 (1); 1972, c. 101, s. 10.

(2) Of the amount maintained under clauses (1) (a), (b) and (c), Composition
of reserves

- (a) at least 25 per cent shall be maintained in cash on hand or on deposit in a chartered bank or other depository approved by the Registrar and in unencumbered debentures, bonds, stocks or other securities of or guaranteed by the Government of Canada, maturing in three years or less; and
- (b) at least 50 per cent shall be maintained in cash on hand or on deposit in a chartered bank or other depository approved by the Registrar and in unencumbered debentures, bonds, stocks or other securities of or guaranteed by the Government of Canada, maturing in ten years or less. R.S.O. 1970, c. 254, s. 81 (2).

109.—(1) The total amount borrowed by a registered loan corporation, by way of the issue of debentures, bonds or other securities, including subordinated notes, and by way of deposits shall not at any time, except as authorized by subsection (5), exceed an amount equal to four times the excess of its assets over its liabilities, including subordinated notes, but the Lieutenant Governor in Council may, on the report of the Registrar, and on such terms and conditions as the Lieutenant Governor in Council may prescribe, Limit on
borrowing

- (a) increase the total amount that may be borrowed by a corporation, other than by subordinated notes, to an amount equal to such greater multiplier in excess of four times as the corporation may petition and is supported by a by-law under section 104, which by-law shall not increase the limit beyond twenty times the excess of its assets over its liabilities, excluding subordinated notes, unless the financial condition of the loan corporation complies with the standards established by the regulations; and
- (b) prescribe the portion of the total amount that may be borrowed by such corporation by way of deposits.

Regulations

(2) The Lieutenant Governor in Council may make regulations prescribing the financial standards of loan corporations for the purpose of subsection (1).

Limit on subordinated notes

(3) Where the Lieutenant Governor in Council has approved a by-law under subsection (1), the corporation shall not have outstanding subordinated notes issued by the corporation in an amount greater than the excess of the corporation's assets over its liabilities, including subordinated notes.

Subordinated notes for term of year or more

(4) Subject to subsection (3), where the Lieutenant Governor in Council has approved a by-law that increases the limit of the total amount that may be borrowed, beyond twenty times the excess of the corporation's assets over its liabilities, as provided for in subsection (1), the corporation shall maintain subordinated notes that have more than one year to run to maturity in an amount being not less than a percentage of the amount by which the total amount borrowed exceeds twenty times the excess of the assets over the liabilities, as determined under subsection (1), such percentage to be fixed by the Registrar.

Restrictions on limit

(5) The aggregate of the amounts of money borrowed by a corporation may, if approved by a by-law in accordance with section 104, at any time exceed the limit otherwise imposed by this section by an amount not greater than the amount by which the aggregate of,

- (a) the cash owned by the corporation and held on hand or on deposit in a chartered bank or other depository approved by the Registrar; and

- (b) the market value of the unencumbered debentures, bonds, stocks or other securities of or guaranteed by the Government of Canada or of a province of Canada and maturing within three years, owned by the corporation,

exceeds 20 per cent of the amount of deposits and of obligations of the corporation payable in less than 100 days.

(6) Where a loan corporation passes a by-law under section 104 that enables the corporation to borrow moneys in excess of twenty times the excess of its assets over its liabilities or that authorizes the issue of subordinated notes, the corporation shall file with the Registrar a return in the form and at such intervals as is required by the Registrar relating to outstanding subordinated notes and to the financial condition of the corporation and compliance thereof with the standards prescribed by the regulations.

Returns

(7) A loan corporation that issues subordinated notes shall at all times maintain unencumbered investments in addition to those investments required to be held under section 108 that,

Subordinated notes

- (a) in the aggregate equal the principal amount of the outstanding subordinated notes;
- (b) are in securities authorized under clauses 178 (1) (e) to (k); and
- (c) that mature within six months of the date that the subordinated notes mature.

(8) Subsections (1) to (7) do not apply to registered loan corporations incorporated and licensed under the *Loan Companies Act* (Canada).

Not applicable to federal corporations
R.S.C. 1970,
c. L-12

(9) Each loan corporation registered in Ontario and incorporated and licensed under the *Loan Companies Act* (Canada) shall file with the Registrar copies of all applications filed under the *Loan Companies Act* (Canada) for any increase in the amount that it may borrow, and shall also file with the Registrar a copy of any approval of such application within seven days of filing or receipt, as the case may be. 1974, c. 88, s. 12, *part*.

Requirements of federal corporations

POWERS OF TRUST COMPANIES

Powers
conferred
on trust
companies

110. Subject to sections 113, 115 and 116, a provincial trust company may and any other registered trust company that has capacity to do so may,

- (a) take, receive and hold all estates and real and personal property that may be granted, committed, transferred or conveyed to the company with its consent, upon any trust or trusts whatsoever not contrary to law, at any time or times, by any person or persons, body or bodies corporate, or by any court of competent jurisdiction;
- (b) take and receive as trustee or as bailee, upon such terms and for such remuneration as are agreed upon, deeds, wills, policies of insurance, bonds, debentures or other valuable papers or securities for money, jewelry, plate or other chattel property of any kind, and to guarantee the safe keeping of the same;
- (c) receive and store for safe keeping all kinds of securities and personal property and rent spaces or compartments for the storage of securities or personal property and enter into legal contracts for regulating the terms and conditions upon which such business is to be carried on;
- (d) act generally as attorney or agent for the transaction of business, the management of estates, the collection of loans, rents, interest, dividends, debts, mortgages, debentures, bonds, bills, notes, coupons and other securities for money;
- (e) act as agent for the purpose of issuing or counter-signing certificates of stock, bonds or other obligations of any association or municipal or other corporation, and to receive, invest and manage any sinking fund therefor on such terms as are agreed upon;
- (f) accept and execute the offices of executor, administrator, trustee, receiver, liquidator, assignee, custodian, trustee in bankruptcy, or of trustee for the benefit of creditors, and of guardian of any minor's estate, or committee of any mentally incompetent person's estate, and to accept the duty of and act generally in the winding up of estates, partnerships, companies and corporations;
- (g) invest any trust money in the hands of the company in any securities in which private trustees may by law invest trust money;

- (h) guarantee any investment made by the company as trustee, agent or otherwise;
 - (i) sell, pledge or mortgage any mortgage or other security, or any other real or personal property held by the company, and make and execute all requisite conveyances and assurances in respect thereof;
 - (j) make, enter into, deliver, accept and receive all deeds, conveyances, assurances, transfers, assignments, grants and contracts necessary to carry out the purposes of the company, and promote its objects and business;
 - (k) charge, collect and receive all proper remuneration, legal, usual and customary costs, charges and expenses for all such services, duties and trusts.
- R.S.O. 1970, c. 254, s. 84.

111.—(1) In this section, “common trust fund” means a fund maintained by a trust company in which moneys belonging to various estates and trusts in its care are combined for the purpose of facilitating investment.

Interpretation

(2) Notwithstanding this or any other Act, any provincial trust company and any other registered trust company that has capacity to do so may, unless the trust instrument otherwise directs, invest trust money in one or more common trust funds of the company, and, where trust money is held by the company as a co-trustee, the investment thereof in a common trust fund may be made by the company with the consent of its co-trustees whether the co-trustees are individuals or corporations.

Common trust funds authorized

(3) The Lieutenant Governor in Council may make regulations with respect to the establishment and operation of common trust funds and the investment of trust money in such funds.

Regulations

(4) A trust company may at any time, and shall when required in writing by the Registrar so to do under subsection (5), file and pass an account of its dealings with respect to a common trust fund in the office of the surrogate court of the county or district in which the fund is being administered, and the judge of the surrogate court, on the passing of such account, has, subject to this section, the same duties and powers as in the case of the passing of executors’ accounts.

Passing of accounts

(5) An account filed with the Registrar pursuant to the regulations, except so far as mistake or fraud is shown, is

When account final

binding and conclusive upon all interested persons as to all matters shown in the account and as to the trust company's administration of the common trust fund for the period covered by the account, unless within six months after the date upon which the account is so filed the Registrar requires in writing that such account be filed and passed before a judge of the surrogate court.

Accounting
only neces-
sary under
this section
or regula-
tions

(6) Notwithstanding any other Act or law, a trust company shall not be required to render an account of its dealings with a common trust fund except as provided in this section or the regulations.

Time and
place for
passing of
account

(7) Upon the filing of an account pursuant to this section, the judge of the surrogate court shall fix a time and place for the passing of the account, and the trust company shall cause a written notice of such appointment and a copy of the account to be served upon the Registrar at least fourteen days before the date fixed for the passing, and the trust company shall not be required to give any other notice of the appointment.

Form of
account

(8) For the purposes of any such accounting, an account may be filed in the form of audited accounts filed with the Registrar pursuant to regulations made under this section.

Registrar to
represent
persons
having
interest
in fund

(9) Upon the passing of an account pursuant to this section, the Registrar shall represent all persons having an interest in the funds invested in the common trust fund, but any such person has the right at his own expense to appear personally or to be separately represented.

Approval
of judge

(10) Where an account filed pursuant to this section has been approved by the judge of the surrogate court, such approval, except so far as mistake or fraud is shown, is binding and conclusive upon all interested persons as to all matters shown in the account and as to the trust company's administration of the common trust fund for the period covered by the account.

Costs

(11) The costs of passing an account pursuant to this section shall be charged to principal and income of the common trust fund in such proportions as the judge of the surrogate court considers proper. R.S.O. 1970, c. 254, s. 85.

Pooled trust
fund defined

112.—(1) In this section, "pooled trust fund" means a trust fund maintained or operated by a trust company in which moneys belonging to various participants are combined for the purpose of investment and entitling the participant to receive on demand, or after a specified period after demand,

an amount computed by reference to the value of a proportionate interest in the assets of such trust fund, but does not include a trust fund operated where participation is limited to less than fifty persons.

(2) The assets of a pooled trust fund shall be held and managed in trust under a trust document for the purpose that complies with the regulations made under subsection (8)

Trust document

(3) No trust company shall offer to any person units or other interests in a pooled trust fund until there has been filed with the Registrar the form of the documents evidencing the trust and such other material as to the reporting to participants, advertising, and training of personnel as the Registrar requires in respect of such offering and a receipt therefor has been obtained from the Registrar.

Filing of trust document

(4) The Registrar may, when in his opinion such action is in the public interest, require a trust company to file with him an information folder in the form prescribed by the regulations with respect to a pooled trust fund and no application or moneys for participation in the pooled trust fund shall be received by the trust company from a prospective purchaser until the trust company has delivered to the prospective purchaser a copy of the information folder that has been filed and the trust company shall obtain from each prospective purchaser with his application a statement in writing acknowledging that he has received a copy of the information folder.

Information folder and delivery to prospective purchaser

(5) The information folder shall provide brief and plain disclosure of all material facts relating to the pooled trust fund, shall comply as to form and content with the requirements of the regulations and shall be so certified by the president, vice-president, or managing director or other director appointed for such purpose and by the secretary or manager of the trust company.

Form of information folder

(6) A trust company that has filed an information folder in respect of a pooled trust fund shall, as long as the trust company continues to offer participation in the pooled trust fund, file with the Registrar a copy of a new information folder in respect of its contracts,

New information folders

- (a) forthwith upon any material changes in any facts set out in the information folder filed in respect of such pooled trust fund; and
- (b) within one year and one month after the date of the latest information folder filed with the Registrar in respect of such pooled trust fund.

Prohibition
order

(7) When it appears to the Registrar that,

- (a) the information folder, or any other document filed with the Registrar by a trust company under this Act or the regulations,
 - (i) fails to comply in any substantial respect with the requirements of this Act or the regulations,
 - (ii) contains any promise; estimate, illustration or forecast that is misleading, false or deceptive, or
 - (iii) conceals or omits to state any material fact necessary in order to make any statement contained therein not misleading in the light of the circumstances in which it is made; or
- (b) the condition or method of operation of the trust company in connection with its pooled trust fund will render its operations hazardous to the public or to its participants in Ontario,

the Registrar shall report the same to the Minister and the Minister, if he concurs in the report and after hearing the trust company, may order the Registrar to prohibit the trust company from continuing to offer participation in such pooled trust fund.

Regulations

(8) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the form and content of the trust instrument establishing a pooled trust fund;
- (b) prescribing investment restrictions and reserves in respect of pooled trust funds;
- (c) prescribing the form and content of information folders;
- (d) prescribing the qualifications and training of persons who may sell interests in pooled trust funds;
- (e) governing the furnishing of information and advertising to the public in connection with a pooled trust fund;
- (f) requiring trust companies to furnish the Registrar with such information, returns and reports respecting pooled trust funds as is prescribed. R.S.O. 1970, c. 254, s. 86.

113.—(1) A provincial trust company does not have power to borrow money by taking deposits or by issuing debentures but may, subject to the regulations, borrow money by the issue of subordinated notes. 1974, c. 88, s. 13 (1).

Trust
companies
not to
borrow by
accepting
deposits

(2) A provincial trust company may borrow money and charge, mortgage, hypothecate or pledge all or any of the real or personal property, present or future, of the company other than property deemed by this Act to be held by the company as trustee or received for investment under sections 115 and 116, to secure any moneys so borrowed. R.S.O. 1970, c. 254, s. 87 (2).

Trust
companies
may
borrow on
own funds

(3) A provincial trust company shall not borrow money under subsections (1) and (2) unless it is authorized to do so by by-law and such by-law does not take effect unless it,

Borrowing
by-law

- (a) has been passed by the affirmative vote of the holders of two-thirds of the shares for the time being carrying voting rights and present or represented by proxy at a general meeting of the shareholders of the trust company duly called to consider such by-law; or
- (b) has been passed by the directors and confirmed at a general meeting of the shareholders of the trust company duly called to consider such by-law by resolution passed by the affirmative vote of the holders of at least two-thirds of the shares for the time being carrying voting rights present or represented by proxy at such meeting. 1972, c. 101, s. 11; 1974, c. 88, s. 13 (2).

114.—(1) A subordinated note,

Features
of sub-
ordinated
note

- (a) shall be issued only on application to the head office of the company;
- (b) shall have a denomination of \$50,000 or more or such other amount as may be prescribed by the Lieutenant Governor in Council by regulation;
- (c) shall be clearly designated on its face and in its terms as a subordinated note;
- (d) shall have a fixed term to maturity of seven years or more, but with the approval of the Registrar may be for a lesser term or include a provision making it subject to earlier redemption at the option of the company; and

(e) shall be evidenced by a certificate, and the form and contents of such certificate are subject to the prior approval of the Registrar.

References
to sub-
ordinated
notes

(2) The trust company, or any person acting on its behalf, shall not, in any offering circular, advertisement, correspondence or literature relating to a subordinated note issued or to be issued by the company refer to such note otherwise than as a subordinated note. 1974, c. 88, s. 14.

Deposits,
power to
receive

115.—(1) Subject to section 181, a provincial trust company and any other registered trust company that has capacity to do so may receive deposits of money repayable upon demand or after notice and may pay interest thereon at such rates and on such terms as the company from time to time may establish, and the company is entitled to retain the interest and profit resulting from the investment or loaning of such deposit money in excess of the amount of interest payable to depositors.

to be
deemed
trust
moneys
and to be
guaranteed

(2) Every trust company receiving deposits in the manner authorized by subsection (1) shall be deemed to hold the deposits as trustee for the depositors and to guarantee repayment thereof, and there shall be ear-marked and definitely set aside in respect thereof securities, or cash and securities, equal to the full aggregate amount thereof, and for the purposes of this subsection "cash" includes moneys on deposit and "securities" includes loans made upon securities.

record

(3) Every trust company receiving moneys on deposit under this section shall keep a record in the form approved by the Registrar, in which shall be entered all sums so received and the names and addresses, so far as known, of the persons from whom they are received. R.S.O. 1970, c. 254, s. 88.

Money for
investment

116.—(1) Subject to section 181, a provincial trust company and any other registered trust company that has capacity to do so may receive money for the purpose of its being invested by the company and may guarantee the repayment of money so received and the payment of the interest thereon at such rate as is agreed upon on fixed days.

Guarantee

(2) Such guarantee by the company shall not be deemed to be a debenture and the money shall not be deemed to be money borrowed by the company by issuing debentures but to be money received in trust, and in such cases the company is entitled to retain the interest and profits resulting from the investment or loaning of such moneys in excess of the amount of interest payable thereon.

(3) Where it is provided by the agreement under which monies are received by the company for guaranteed investment as mentioned in subsection (1) that specific securities shall be allocated in respect thereof, such securities shall be ear-marked and definitely set aside in respect thereof, and in respect of all other moneys received for guaranteed investment as mentioned in subsection (1) there shall be ear-marked and definitely set aside in respect thereof securities, or cash and securities, equal to the full aggregate amount thereof, and for the purposes of this subsection "cash" includes moneys on deposit and "securities" includes loans made upon securities. R.S.O. 1970, c. 254, s. 89.

Securities
allocated to
guaranteed
investment

117. A provincial trust company shall not exercise any of the powers contained in sections 115 and 116 unless it is authorized to do so by by-law and such by-law does not take effect unless it,

Deposit and
investment
by-law

- (a) has been passed by the affirmative vote of the holders of two-thirds of the shares for the time being carrying voting rights and present or represented by proxy at a general meeting of the shareholders of the trust company duly called to consider such by-law; or
- (b) has been passed by the directors and confirmed at a general meeting of the shareholders of the trust company duly called to consider such by-law by resolution passed by the affirmative vote of the holders of at least two-thirds of the shares for the time being carrying voting rights present or represented by proxy at such meeting. 1972, c. 101, s. 12.

118.—(1) The total of the moneys received by a registered trust company as deposits under section 115 and for investment under section 116 or borrowed under section 113 shall not at any time, except as authorized by subsection (5), exceed an amount equal to twelve and one-half times the excess of its assets over its liabilities, including subordinated notes, but the Lieutenant Governor in Council may, on the report of the Registrar and on such terms and conditions as the Lieutenant Governor in Council may prescribe,

Limit on
guaranteed
funds

- (a) increase the total amount that may be so received or borrowed other than by subordinated notes by a company to an amount equal to such greater multiplier in excess of twelve and one-half times as the company may petition and is approved by a by-law under section 113, which by-law shall not increase the limit beyond twenty times the excess of its assets over its liabilities, excluding sub-

ordinated notes, unless the financial condition of the trust company complies with the standards established by the regulations; and

- (b) prescribe the portion of the total amount that may be so received or borrowed by such company that may be borrowed by way of deposits.

Regulations

(2) The Lieutenant Governor in Council may make regulations prescribing the financial standards of trust companies for the purposes of subsection (1).

Limit on
subordinated
notes

(3) Where the Lieutenant Governor in Council has approved a by-law under subsection (1), the company shall not have outstanding subordinated notes issued by the company in an amount greater than the excess of the company's assets over its liabilities, including subordinated notes.

Subordinated
notes for
term of year
or more

(4) Subject to subsection (3), where the Lieutenant Governor in Council has approved a by-law that increases the limit of the total amount that may be borrowed, beyond twenty times the excess of the company's assets over its liabilities, as provided for in subsection (1), the company shall maintain subordinated notes that have more than one year to run to maturity in an amount being not less than a percentage of the amount by which the total amount borrowed exceeds twenty times the excess of the assets over the liabilities, as determined under subsection (1), such percentage to be fixed by the Registrar.

Restrictions
on limit

(5) The aggregate of the amounts of money so received and borrowed by a trust company may, if approved by a by-law in accordance with section 113, at any time exceed the limit otherwise imposed by this section by an amount not greater than the amount by which the aggregate of,

- (a) the cash held by the company in its own right and for guaranteed investment and held on hand or on deposit in a chartered bank or other depository approved by the Registrar; and
- (b) the market value of the unencumbered debentures, bonds, stocks or other securities of or guaranteed by the Government of Canada or of a province of Canada and maturing within three years held by the company in its own right and received for guaranteed investment,

exceeds 20 per cent of the amount of deposits and of funds received for guaranteed investment coming due in less than 100 days.

(6) Where a trust company passes a by-law under section 113 that enables the company to receive and borrow moneys in excess of twenty times the excess of its assets over its liabilities or that authorizes the issue of subordinated notes, the trust company shall file with the Registrar a return in such form and at such intervals as is required by the Registrar relating to outstanding subordinated notes and to the financial condition of the company and compliance thereof with the standards prescribed by the regulations.

Returns

(7) A trust company that issues subordinated notes shall at all times maintain unencumbered investments in addition to those investments required to be held under section 121 that,

Subordinated
notes

(a) in the aggregate equal the principal amount of the outstanding subordinated notes;

(b) are in securities authorized under clauses 178 (1) (e) to (k); and

(c) mature within six months of the date that the subordinated notes mature.

(8) Subsections (1) to (7) do not apply to companies incorporated under the provisions of the *Trust Companies Act* (Canada).

Not
applicable
to federal
companies
R.S.C. 1970,
c. T-16

(9) Each trust company registered in Ontario and incorporated under the *Trust Companies Act* (Canada) shall file with the Registrar copies of all applications and supporting documents filed under the *Trust Companies Act* (Canada) respecting applications for any increase in the amount it may borrow or receive as deposits or for guaranteed investment, and shall also file with the Registrar a copy of any approval of such application within seven days of filing or receipt, as the case may be. 1974, c. 88, s. 15.

Require-
ments of
federal
companies

119. Notwithstanding anything in this Act, a provincial trust company may, with the approval of the Registrar, hypothecate, mortgage or pledge the cash and securities earmarked and set aside under sections 115 and 116 of this Act to the Canada Deposit Insurance Corporation for a loan from that Corporation. R.S.O. 1970, c. 254, s. 91; 1972, c. 101, s. 13.

Pledge of
securities
to Canada
Deposit
Insurance
Corporation

Extent of
liability

120.—(1) The liability of a trust company to persons interested in an estate held by the company as executor, administrator, trustee, receiver, liquidator, assignee, guardian or committee is the same as if the estate had been held by a private person in the like capacity, and the company's powers are the same.

Approval of
company as
executor,
etc.

(2) Where a trust company is authorized to execute the office of executor, administrator, trustee, receiver, liquidator, assignee, guardian or committee, and the Lieutenant Governor in Council approves of the company being accepted as a trust company for the purposes of the Supreme Court, every court or judge having authority to appoint such an officer may, with the consent of the company, appoint the company to exercise any of such offices in respect of any estate or person under the authority of such court or judge, or may grant to the company probate of any will in which the company is named as an executor; but no company that has issued or has authority to issue debentures or debenture stock, or that has received or has authority to receive deposits, except in the manner authorized by this Act, shall be approved.

Appointment
of company
as sole
trustee

(3) A trust company so approved may be appointed to be a sole trustee, notwithstanding that but for this Act it would be necessary to appoint more than one trustee.

Idem

(4) A trust company so approved may be appointed to any of the offices mentioned in subsection (2) jointly with another person.

When
appointment
may be made
by court
R.S.O. 1980,
c. 512

(5) Such appointment may be made whether the trustee is required under a deed, will or document creating a trust or whether the appointment is under the *Trustee Act* or otherwise.

Security not
required

(6) Notwithstanding any rule or practice or any provision of any Act requiring security, it is not necessary for the company to give any security for the due performance of its duty as such executor, administrator, trustee, receiver, liquidator, assignee, guardian or committee unless otherwise ordered.

Revocation
of approval

(7) The Lieutenant Governor in Council may at any time revoke the approval given under this section. R.S.O. 1970, c. 254, s. 92.

Reserves
required on
deposits

121.—(1) Every registered trust company shall at all times maintain,

(a) cash on hand or on deposit in a chartered bank or other depository approved by the Registrar;

- (b) unencumbered debentures, bonds, stocks or other securities of or guaranteed by the Government of Canada or of or guaranteed by any province of Canada;
- (c) loans payable on demand and fully secured by securities referred to in clause (b); and
- (d) subject to the approval of the Registrar and to such conditions as the Registrar may impose, a credit from chartered banks in Canada,

to an aggregate of at least 20 per cent of the amount of deposits and of funds received for guaranteed investment coming due in less than 100 days. R.S.O. 1970, c. 254, s. 93 (1); 1972, c. 101, s. 14.

(2) Of the amount maintained under clauses (1) (a), (b) and (c), ^{Composition of reserves}

- (a) at least 25 per cent shall be maintained in cash on hand or on deposit in a chartered bank or other depository approved by the Registrar and in unencumbered debentures, bonds, stocks or other securities of or guaranteed by the Government of Canada, maturing in three years or less; and
- (b) at least 50 per cent shall be maintained in cash on hand or on deposit in a chartered bank or other depository approved by the Registrar and in unencumbered debentures, bonds, stocks or other securities of or guaranteed by the Government of Canada, maturing in ten years or less. R.S.O. 1970, c. 254, s. 93 (2).

GENERAL POWERS

122.—(1) Every corporation may establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or former employees of the corporation, or its predecessors in business, or the dependants or connections of such persons, and to grant pensions and allowances and make payments towards insurance or for any object similar to those set forth in this subsection, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition or for any public, general or useful object.

^{Powers of corporation as to benefit funds, etc., for employees and their families}

Declaration
as to
powers of
corporation

(2) Every provincial corporation shall be deemed to have possessed since the date of its incorporation the powers set forth in subsection (1) including the power to exercise such powers jointly with any registered corporation, by whatever authority incorporated, possessing the same or similar powers, in such a way as to benefit the employees, or former employees, of such corporations or predecessors in business of such corporations or the dependants or connections of such persons. R.S.O. 1970, c. 254, s. 94.

Suspension
or revoca-
tion of
charter

123. The charter or other instrument of incorporation of a corporation may at any time, for cause shown to the satisfaction of the Lieutenant Governor in Council, be suspended or revoked by the Lieutenant Governor in Council. R.S.O. 1970, c. 254, s. 95.

Capacity of
corpora-
tions

124. Every provincial corporation, unless it is otherwise expressly declared in the Act or instrument creating it, has and shall be deemed from its creation to have had the general capacity that the common law ordinarily attaches to corporations created by charter. R.S.O. 1970, c. 254, s. 96.

Extension of
business
beyond
Ontario

125. Every provincial corporation, unless it is otherwise expressly provided in the Act or instrument creating it, may exercise its powers beyond Ontario to the extent to which the laws in force where the powers are sought to be exercised permit, and may accept extra-provincial powers and rights. R.S.O. 1970, c. 254, s. 97.

Reserve
fund

126. A corporation may maintain a reserve fund out of its earnings or other income not required to meet its present liabilities. R.S.O. 1970, c. 254, s. 98.

Prohibition
or limitation
of loans
upon shares

127.—(1) A corporation may pass a by-law prohibiting the loaning to shareholders upon the security of their shares, or, subject to the limitations contained in this section, may pass a by-law fixing the aggregate amount that may be loaned on such shares, and neither of such by-laws shall be repealed until all liabilities of the corporation are discharged.

Limitation
as to loans
on its own
stock

(2) Subject to subsection (1), the corporation may lend upon its own paid up stock to an amount not exceeding at any one time in the aggregate of all such loans 10 per cent of the corporation's paid up stock.

Margin

(3) No such loan shall exceed 80 per cent of the market price of the stock. R.S.O. 1970, c. 254, s. 99.

Not to lend
on own
stock

128. A corporation shall not, except in the manner provided in section 127, lend on its own shares with or without collateral security. R.S.O. 1970, c. 254, s. 100.

129.—(1) No corporation, and no director, officer or employee thereof, either personally or on behalf of such corporation, and no other company the majority of the capital stock of which is owned or controlled by such corporation, its shareholders, directors, officers or employees, shall, either directly or indirectly, transact the business of or act as insurance agent or broker within the meaning of the *Insurance Act*, or exercise pressure upon any borrower or mortgagor to place insurance for the security of such corporation, in or through any particular agency or brokerage office, but nothing in this section prevents such corporation from stipulating in its contract of loan that any required insurance must be effected with an approved insurer.

Prohibition
against
acting as
insurance
agent

R.S.O. 1980,
c. 218

(2) Subsection (1) does not apply to the director of a corporation who is able to satisfy the Superintendent of Insurance that the business of insurance is his major occupation. R.S.O. 1970, c. 254, s. 101.

Exception

130. A person not of the full age of eighteen years may deposit money with a registered corporation in his own name, and the money so deposited may be repaid to him, and he may give a valid discharge therefor, notwithstanding his minority. R.S.O. 1970, c. 254, s. 102; 1971, c. 98, s. 4, Sched., par. 20.

Minors
may make
deposits

131.—(1) A corporation is not bound to see to the execution of any trust, whether express, implied or constructive, to which any share of its stock, or any deposit, guaranteed investment certificate or debenture is subject.

Trusts

(2) The receipt of the person in whose name any such share, deposit, guaranteed investment certificate or debenture stands in the books of the corporation is a sufficient discharge to the corporation for any payment made in respect thereof, and a direction to transfer, signed by the person in whose name any such share, deposit, guaranteed investment certificate or debenture stands in the books of the corporation, is sufficient authority to the corporation for any transfer made in respect thereof, notwithstanding any trust to which the same may then be subject and whether the corporation has or has not had notice of the trust.

Sufficient
discharge

(3) A corporation is not bound to see to the application of the money paid upon such receipt. R.S.O. 1970, c. 254, s. 103.

Application
of money
paid

132. A provincial corporation may, by writing under its seal, empower any person, either generally or in respect of

Power of
attorney by
corporation

any specified matters, as its attorney, to execute on its behalf, deeds to which it is a party in any capacity in any place situate in or outside Ontario, and every deed signed by such attorney, on behalf of the corporation and under his seal, binds the corporation and has the same effect as if it were under the seal of the corporation. R.S.O. 1970, c. 254, s. 104.

Official
seal for use
abroad

133.—(1) A provincial corporation may have a seal to be known as the “official seal” for use in any territory, district or place outside Ontario, which shall be a facsimile of the seal of the corporation, with the addition on its face of the name of the territory, district or place where it is to be used.

Authority
to agent to
affix seal

(2) A corporation having an official seal may, by writing under its seal, authorize any person appointed for the purpose in any territory, district or place outside Ontario, to affix it to any deed or other document to which the corporation is party in any capacity in that territory, district or place.

Certifying
date and
period of
sealing

(3) The person affixing an official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing it.

Effect of
official seal

(4) A deed or other document to which an official seal is duly affixed binds the corporation as if it had been sealed with the seal of the corporation. R.S.O. 1970, c. 254, s. 105.

AMALGAMATION OF CORPORATIONS AND PURCHASE AND SALE OF ASSETS

Power to
unite with
other cor-
porations and
to purchase
or sell assets

134.—(1) Any registered loan corporation may unite, merge, amalgamate and consolidate its stock, property, business and franchises with those of any loan corporation or, subject to subsection 144 (3), with those of any trust company in Canada, or may purchase the assets of any other loan corporation in Canada, or may sell its assets to any registered corporation, and for the purpose of carrying out such purchase or sale the purchasing corporation shall assume the liabilities of the vendor corporation, and may enter into such bond or agreement of indemnity with the corporation or the individual shareholders thereof, or both, as may be necessary, and the corporations may enter into the contracts and agreements necessary to such union, merger, amalgamation, consolidation, sale or purchase. 1973, c. 128, s. 12.

(2) Sections 135 to 142 do not apply to the purchase by a ^{Where} registered extra-provincial corporation of the assets of a ^{ss. 135-142 do} corporation that is not registered under this Act. R.S.O. 1970, c. 254, s. 106 (2). ^{not apply}

135—(1) The directors of any corporation mentioned in ^{Directors} section 134 may enter provisionally into a joint agreement ^{may make} under the seal of each of the corporations for the union, ^{agreement} merger, amalgamation or consolidation of the corporations, ^{for amal-} or for the sale or purchase by the one corporation of the ^{gation or} assets ^{for purchase} of the other corporation. ^{or sale of}

(2) The agreement shall prescribe the terms and conditions ^{Matters to} of the proposed transaction and the mode of carrying it into ^{be specified in} effect. R.S.O. 1970, c. 254, s. 107 (1, 2). ^{agreement}

(3) If the two corporations are to be merged into one ^{Idem} corporation, the agreement shall specify the name of the new or of the continuing corporation, and the number of directors and the officers thereof, and shall state who are to be the first directors and officers, the capital stock, the number of shares into which such stock is divided, the par value, if any, of the shares and the manner of converting the capital stock of each of the existing corporations into that of the new or continuing corporation. R.S.O. 1970, c. 254, s. 107 (3); 1973, c. 128, s. 13.

(4) The agreement shall contain such other details ^{Other} as the directors of the corporations consider necessary to perfect the new organization, and the union, merger, amalgamation and consolidation, and the after management and working thereof, and to complete the terms and mode of payment for the assets of one corporation purchased or acquired by the other. ^{details}

(5) In an agreement for the purchase and sale of assets, ^{Considera-} the consideration may consist wholly or in part of partly ^{tion.} paid or of paid up shares of the permanent capital stock of the purchasing corporation.

(6) Such agreement or, if no agreement has been entered ^{Agreement} into but an offer has been made by a corporation under its ^{to be} seal for the purchase of the assets of another corporation, ^{subject to} such offer shall be submitted to the shareholders of each ^{approval of} corporation at a meeting thereof to be held separately for ^{share-} the purpose of taking the agreement or the offer into considera- ^{holders} tion.

(7) Notice of the time and place of the meeting of the ^{Notice of} corporation in which he holds shares and the objects thereof ^{meeting to} ^{consider} ^{agreement}

shall be given by written or printed notice addressed to every shareholder, together with a copy of the proposed agreement, at his last known post office address, and also by a general notice in a newspaper published at the chief place of business of the corporation once a week for six successive weeks.

Notice to
Registrar

(8) A like notice, together with two copies of the proposed agreement, shall be delivered to the Registrar at least one month before the date of either of the meetings of shareholders called to consider it. R.S.O. 1970, c. 254, s. 107 (4-8).

Proceedings
to ratify
agreement

136. At each of the meetings of shareholders the agreement or offer shall be considered, and if at each meeting the holders of at least 50 per cent of the issued shares of the corporation for the time being carrying voting rights are present in person or represented by proxy and the agreement or offer is ratified or accepted by resolution carried by the affirmative vote of the holders of at least three-fourths of the shares represented at such meeting, that fact shall be certified upon the agreement or offer by the secretary or manager of each corporation under the seal of such corporation. R.S.O. 1970, c. 254, s. 108.

Dispensing
with
ratification

137. The Lieutenant Governor in Council, in the case of a proposed purchase of assets, may dispense with the ratification or acceptance of the agreement or offer by the shareholders of the purchasing corporation where it is shown to his satisfaction that the shareholders, after due notice thereof, have ratified a general resolution or by-law authorizing the purchase of the assets of any loan corporation upon the basis and within the limits specified in such agreement or offer. R.S.O. 1970, c. 254, s. 109.

Ratified
agreement
to be filed

138.—(1) If the agreement is ratified or the offer is accepted at the meeting of the shareholders of each of the corporations, or in the case provided for in section 137 at the meeting of the shareholders of the selling corporation, the agreement or offer, with the certificates or certificate thereon, shall be filed with the Registrar.

Assent

(2) The Registrar shall submit the agreement or offer for the assent of the Lieutenant Governor in Council.

Effect of
assent

(3) If the Lieutenant Governor in Council assents thereto, the agreement or offer shall be deemed to be the agreement and act of union, amalgamation and consolidation of the corporations, or the agreement and deed of purchase and

acquisition of the assets of the selling corporation by the purchasing corporation. R.S.O. 1970, c. 254, s. 110.

139.—(1) Upon proof that the foregoing requirements ^{Certificate of assent} have been duly complied with, the Minister shall issue a certificate under his hand and seal certifying the assent of the Lieutenant Governor in Council and the date thereof, and declaring the purchase and the sale of the assets and the names of the corporations who are parties thereto, or, in the case of amalgamation, declaring the amalgamation of the corporations, naming them, and the name of the new or of the continuing corporation, together with such other matters, if any, as appear to him necessary or desirable in the public interest.

(2) The certificate of the Minister is for all purposes and ^{Effect as evidence} in all courts conclusive evidence of all matters therein certified or declared.

(3) The Registrar shall give public notice in *The Ontario* ^{Notice} *Gazette* of the issue of the Minister's certificate.

(4) It is sufficient to register a certified copy of the ^{Registration of certificate of assent} Minister's certificate in each registry division or land titles division in which instruments affecting lands or interests in lands, included or intended to be included in the transfer or amalgamation, are registered.

(5) Any document under the hand or purporting to be ^{Certificate of Registrar} under the hand of the Registrar, certifying the document to be or to contain a true copy of the Minister's certificate or of any instrument referred to in the certificate, shall be registered in any registry division or land titles division by the land registrar thereof upon it being tendered to him for registration accompanied by the proper fee.

(6) The certificate shall be entered in the general register ^{Registration in general register} of the registry division or in the book kept in the land titles division.

(7) Copies so certified of any such certificate or instrument shall be received by the proper land registrar under the *Land Titles Act* as conclusive evidence of all matters therein certified or ^{Certified copies of certificate} declared. ^{R.S.O. 1980, c. 230}

(8) For the purpose of any instrument required to be ^{Security interest} registered under the *Personal Property Security Act*, it is sufficient in order to show the transmission of title in respect of any personal property or interest in personal property included or intended to be included in a transfer or amalgamation, such as is mentioned in ^{R.S.O. 1980, c. 375}

section 138 and this section, if the instrument affecting such property or interest recites the certificate registered as provided in subsection (4) and states the registry division or land titles division in which it is registered and its registration number.

**Application
of section**

(9) This section extends to and includes any such certificate or certified copy issued or purporting to have been issued after the 13th day of April, 1897, under *The Loan Corporations Act*, being chapter 205 of the Revised Statutes of Ontario, 1897. R.S.O. 1970, c. 254, s. 111.

**Evidence of
assent of the
Lieutenant
Governor
in Council**

140. The Registrar may, by a certificate under his hand and seal endorsed upon or identifying the agreement or offer mentioned in subsection 135 (6), or any counterpart or copy thereof, certify that the agreement or offer has been assented to by the Lieutenant Governor in Council, and his certificate with a copy of the order in council attached is *prima facie* evidence of such assent. R.S.O. 1970, c. 254, s. 112.

**Assets of
selling
corporation
to vest in
purchasing
corporation**

141.—(1) In the case of a purchase and sale of assets so assented to, the assets of the selling corporation become vested in the purchasing corporation on and from the date of such assent without any further conveyance, and the purchasing corporation thereupon becomes and is responsible for the liabilities of the selling corporation.

**Disposal of
assets by
purchasing
corporation**

(2) In dealing with the assets of the selling corporation, it is sufficient for the purchasing corporation to recite the agreement and the assent of the Lieutenant Governor in Council thereto, with the date of the assent.

**Rights of
creditors**

(3) No such transfer affects the rights of any creditor of the transferring corporation.

**Privity of
contract
between
purchasing
corporation
and each
creditor
of selling
corporation**

(4) By every such agreement made or purporting to be made under this Act, the purchasing corporation shall be deemed to covenant and agree with each creditor of the selling corporation that the purchasing corporation will pay to him the sum in which the selling corporation is indebted to him at such time and place as such sum would have been payable had such agreement not been made.

**Dissolution
of selling
corporation**

(5) Where the Lieutenant Governor in Council assents to an agreement for the sale of the assets of a corporation, the selling corporation is, from the date of the assent, dissolved, except so far as is necessary to give full effect to the agreement. R.S.O. 1970, c. 254, s. 113.

142.—(1) In the case of an amalgamation, the parties thereto are, from the date of the assent of the Lieutenant Governor in Council, consolidated and amalgamated and they shall continue thereafter as one corporation under the jurisdiction specified in the amalgamation agreement and by the name stated in the Minister's certificate.

Amalgamation

(2) From the date of the assent, all the business and real and personal property, and all the rights and incidents appurtenant thereto, all stock, mortgages and other securities, subscriptions and other debts due, and other things in action belonging to each of the amalgamating corporations are vested in the amalgamated corporation without further act or deed.

Business and property vested in amalgamated corporation

(3) All rights of creditors and liens upon the property of each of the amalgamating corporations are unimpaired by the amalgamation.

Creditors' rights

(4) All debts, liabilities and duties of each of the amalgamating corporations attach to the amalgamated corporation from the date of the assent and may be enforced against it to the same extent as if they had been incurred or contracted by it.

Debts and liabilities

(5) Where the amalgamated corporation is to continue as a provincial corporation, the Lieutenant Governor shall, by letters patent, issue to the amalgamated corporation a charter, as at the date of the assent, confirming the amalgamation agreement and continuing the amalgamated corporation as if it had been incorporated under this Act.

Charter

(6) Where the amalgamated corporation is to continue as other than a provincial corporation and one or more, but not all, parties to the amalgamation agreement are provincial corporations, the parties to the amalgamation agreement may apply to the proper officer of the jurisdiction of continuation specified in the amalgamation agreement for an instrument amalgamating and continuing them as an amalgamated corporation under the laws of that jurisdiction and as incidental thereto a provincial corporation may apply for letters patent or other instrument continuing it as if it had been incorporated under the laws of that jurisdiction. R.S.O. 1970, c. 254, s. 114.

To permit continuation of amalgamated company under another jurisdiction

143.—(1) In addition to its powers under section 134, a registered loan corporation may, for the purpose of either acquiring the assets of any other loan corporation in Canada or uniting, merging or amalgamating with any such corporation under sections 134 to 142, purchase not less than

Acquisition or amalgamation by registered loan corporation by purchase of shares

67 per cent of the outstanding shares of any such corporation, subject to the following:

1. No such purchase shall be made unless authorized by the Lieutenant Governor in Council.
2. The Lieutenant Governor in Council may authorize such purchase on the report of the Registrar supported by evidence that,

(a) an offer to purchase has been accepted,

(i) in writing by the holders of at least 67 per cent of the outstanding shares of such other corporation, or

(ii) by resolution or resolutions carried by the affirmative vote of the holders of at least 67 per cent of the outstanding shares of each class of such corporation at a general meeting of the shareholders thereof; and

(b) the purchase has been submitted to a general meeting of the shareholders of the purchasing corporation at which the holders of at least 50 per cent of the issued shares of such corporation for the time being carrying voting rights are present in person or represented by proxy and the purchase is approved by resolution carried by the affirmative vote of the holders of at least three-fourths of the shares represented at such meeting.

3. The power to purchase shares under this section is in addition to the powers set forth in section 178, and the limitations and provisos contained in section 185 do not apply to any such purchase of shares.
4. Where a corporation has purchased shares under this section, it shall within a period of two years after the purchase has been authorized by the Lieutenant Governor in Council proceed under sections 134 to 142 either to acquire the assets and assume the duties, obligations and liabilities of the other corporation or to unite, merge or amalgamate with such other corporation, but the Lieutenant Governor in Council, on being satisfied that the circumstances so warrant, may extend such

period from time to time and, after the expiration of such period and any such extension thereof, the shares so purchased shall not be allowed as assets of the purchasing corporation in the annual report prepared by the Registrar for the Minister, and the Registrar may direct the corporation to sell or otherwise absolutely dispose of such shares.

(2) The consideration for the shares acquired under the authority of this section may be cash or shares in the capital stock of the purchasing corporation or in part cash and in part shares of the purchasing corporation or such other consideration as is agreed upon. Consideration for shares

(3) Nothing in this section shall be construed as authorizing a corporation to purchase or acquire its own shares. No power to purchase own shares

(4) Any provisions in any letters patent or special Act by which a purchasing corporation was incorporated, or in any other statute or law, granting any shareholders or other persons a primary right to an allotment of shares, do not apply to the issue of any shares by the purchasing corporation for the purpose of subsection (2). R.S.O. 1970, c. 254, s. 115. Allotment rights not to apply

144.—(1) In this section, “fiduciary” includes a trustee, bailee, executor, administrator, assignee, guardian, committee, receiver, liquidator or agent, and “instrument” includes every will, codicil, or other testamentary document, settlement, instrument of creation, deed, mortgage, assignment, an Act of the Legislature, and a judgment, decree, order, direction and appointment of any court, judge, or other constituted authority. R.S.O. 1970, c. 254, s. 116 (1). Interpretation

(2) Any registered trust company may unite, merge, amalgamate and consolidate its stock, property, business and franchises with those of any loan corporation or trust company in Canada, or may purchase the assets of any corporation in Canada or may sell its assets to any registered trust company, and for the purpose of carrying out such purchase or sale the purchasing corporation shall assume the liabilities of the vendor corporation, and may enter into such bond or agreement of indemnity with the vendor corporation or the individual shareholders thereof, or both, as may be necessary, and the corporations may enter into the agreements necessary to such union, merger, amalgamation, consolidation, sale or purchase, and subsection 134 (2) and sections 135 to 142, apply, with necessary modifications, thereto. Power of trust companies to unite with other corporations and to purchase or sell assets

Where trust company purchases assets of loan corporation

(3) In any case of a union, merger, amalgamation or consolidation of a trust company with a loan corporation or a purchase of assets of a loan corporation by a trust company, the new, continuing or purchasing corporation, as the case may be, shall be a trust company, and it shall forthwith earmark and set aside in respect of any debentures and deposits of the loan corporation, securities, or cash and securities, equal to the full aggregate amount of such debentures and deposits, and for the purpose of this subsection, "cash" includes moneys on deposit and "securities" includes loans made upon securities. 1973, c. 128, s. 14.

Trusts to pass to new companies

(4) On and from the assent of the Lieutenant Governor in Council, as provided in subsection 139 (1), to the purchase and sale, or to the amalgamation, all trusts of every kind and description, including incomplete or inchoate trusts, and every duty assumed by or binding upon either of the corporations, parties to the purchase and sale, or to the amalgamation, are vested in and bind and may be enforced against the purchasing or new or continuing corporation as fully and effectually as if it had been originally named as the fiduciary in the instrument.

Subject-matter of trust to vest in new company

(5) Wherever in an instrument any estate, money or other property, or any interest, possibility or right is intended at the time or times of the publishing, making or signing of the instrument to be thereafter vested in or administered or managed by or put in the charge of the selling corporation or of either of the amalgamated corporations as the fiduciary, the name of the new or continuing corporation shall be deemed to be substituted for the name of the old corporation, and such instrument vests the subject-matter therein described in the new or continuing corporation according to the tenor of, and at the time indicated or intended by the instrument, and the new or continuing corporation shall be deemed to stand in the place and stead of the old corporation.

References in will or codicil

(6) Where the name of the selling corporation or of either of the amalgamated corporations appears as executor, trustee, guardian, or curator in a will or codicil, such will or codicil shall be read, construed and enforced as if the new or continuing corporation was so named therein, and it has, in respect of the will or codicil, the same status and rights as the selling or amalgamating corporation.

Duties of old corporation not completed

(7) In all probates, administrations, guardianships, curatorships or appointments of administrator or guardian *ad litem* issued or made by any court in Ontario to the selling corporation or to either of the amalgamated corporations, from

which at the date of such assent it had not been finally discharged, the new or continuing corporations shall *ipso facto* be substituted therefor. R.S.O. 1970, c. 254, s. 116 (4-7).

145.—(1) In addition to its powers under section 144, a registered trust company may, for the purpose of either acquiring the assets of any corporation in Canada or uniting, merging or amalgamating with any other trust company in Canada under section 144, purchase not less than 67 per cent of the outstanding shares of any such corporation or trust company, subject to the following:

Acquisition
or amalga-
mation by
registered
trust
company by
purchase of
shares

1. No such purchase shall be made unless authorized by the Lieutenant Governor in Council.
2. The Lieutenant Governor in Council may authorize such purchase on the report of the Registrar, supported by evidence that,

(a) an offer to purchase has been accepted,

(i) in writing by the holders of at least 67 per cent of the outstanding shares of such other corporation or trust company, or

(ii) by resolution or resolutions carried by the affirmative vote of the holders of at least 67 per cent of the outstanding shares of each class of such other corporation or trust company at a general meeting of the shareholders thereof; and

(b) the purchase has been submitted to a general meeting of the shareholders of the registered trust company at which the holders of at least 50 per cent of the issued shares of such company for the time being carrying voting rights are present in person or represented by proxy and the purchase is approved by resolution carried by the affirmative vote of the holders of at least three-fourths of the shares represented at such meeting.

3. The power to purchase shares under this subsection is in addition to the powers that a registered trust company has under section 181, and the limitations and provisos contained in section 185 do not apply to any such purchase of shares.

4. Where a trust company has purchased shares under this section it shall within a period of two years after such purchase has been authorized by the Lieutenant Governor in Council proceed under section 144 either to acquire the assets and assume the duties, obligations and liabilities of the other corporation or to unite, merge or amalgamate with such other trust company, but the Lieutenant Governor in Council, on being satisfied that the circumstances so warrant, may extend such period from time to time and, after the expiration of such period and any such extension thereof, the shares so purchased shall not be allowed as assets of the purchasing trust company in the annual report prepared by the Registrar for the Minister, and the Registrar may direct such trust company to sell or otherwise absolutely dispose of such shares.

Considera-
tion

- (2) The consideration for the shares acquired under the authority of this section may be cash or shares in the capital stock of the purchasing company or in part cash and in part shares of such purchasing company or such other consideration as is agreed upon.

No power
to purchase
own shares

- (3) Nothing in this section shall be construed as authorizing a company to purchase or acquire its own shares.

Allotment
rights not
to apply

- (4) Any provisions in any letters patent or special Act by which a purchasing company was incorporated, or in any other statute or law, granting any shareholders or other persons a primary right to an allotment of shares, do not apply to the issue of any shares by the purchasing company for the purposes of subsection (2). R.S.O. 1970, c. 254, s. 117.

REGISTRAR

Appointment

- 146.**—(1) There shall be a Registrar and an assistant registrar who shall be appointed by the Lieutenant Governor in Council.

Assistant
registrar,
duties

- (2) The assistant registrar shall perform the duties of the Registrar in the case of the latter's absence or illness, or of a vacancy in the office of Registrar, and shall also perform such other duties as may be assigned to him by the Lieutenant Governor in Council, by the Minister or by the Registrar.

Protection
from
personal
liability

- (3) No action or other proceeding for damages shall be instituted against the Registrar or assistant registrar, or anyone acting under the authority of the Registrar or assistant

registrar, for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty. R.S.O. 1970, c. 254, s. 118.

147. The Registrar shall have a seal of office, which shall bear upon its face the words "Registrar of Loan and Trust Corporations". R.S.O. 1970, c. 254, s. 119. Official seal

148.—(1) The Registrar shall keep, Registers:

(a) a register to be called the "Loan Companies' Register", wherein shall be recorded the names of the loan corporations that are from time to time entitled to registry; and Loan companies' register

(b) a register to be called the "Trust Companies' Register", wherein shall be recorded the names of the trust companies that are from time to time entitled to registry. Trust companies' register

(2) A corporation shall not be registered on more than one of such registers, and shall not transact or undertake business in Ontario other than the business for which it is registered. R.S.O. 1970, c. 254, s. 120. No corporation to be registered on more than one register

149.—(1) The duty of determining, distinguishing and registering the corporations that under this Act are required to be registered and are entitled to registry, and of granting registry accordingly, is upon the Registrar, subject to appeal as provided in section 168. Duties of Registrar

(2) For the purposes of his duties, the Registrar may require to be made or may take and receive affidavits or depositions and may examine witnesses upon oath. Power to require evidence

(3) The evidence and proceedings in any matter before the Registrar may be reported by a stenographer who has taken an oath before the Registrar faithfully to report the same. R.S.O. 1970, c. 254, s. 121. Employment of stenographer

150.—(1) The Registrar shall prepare for the Minister, from statements filed by the corporations and from any inspection or inquiries made, an annual report, showing particulars of the business of each corporation as ascertained from such statements, inspection and inquiries, and the report shall be printed and published forthwith after completion. Annual report

Only
authorized
investments
allowed as
assets

(2) In the report, the Registrar shall allow as assets only such of the investments of the several corporations as are authorized by this Act or by their Acts of incorporation or by the general Acts applicable to such investments.

Corrections
in annual
statements

(3) In the report, the Registrar shall make all necessary corrections in the annual statements made by the corporations herein provided and is at liberty to increase or diminish the assets or liabilities of the corporations to the true and correct amounts thereof as ascertained by him in the examination of their affairs at the head office or any branch thereof or otherwise.

Appraise-
ment of
over-valued
real estate

(4) If it appears to the Registrar or if he has any reason to suppose from the statements prepared and delivered to him by the corporations or otherwise that the value placed by any corporation upon the real estate owned by it, or any parcel thereof, is too great, or that the amount secured by mortgage or hypothec upon any parcel of real estate, together with interest due and accrued thereon is greater than the value of the parcel, or that the parcel is not sufficient for the loan and interest, or that the value of any investments of the funds of the corporation or of its trust funds is less than the amount of the value of the investments shown in the books of the corporation, he may require the corporation to secure an appraisal of such real estate or other security by one or more competent valuers or he may himself procure such appraisal at the expense of the corporation, and, if it is made to appear that the value of such real estate or other security held is less than the amount at which it is carried on the books of the corporation or is not adequate security for the loan and interest, he may write off such real estate, loan and interest, or investment, a sum sufficient to reduce its book value to such amount as may fairly be realized therefrom, such amount in no case to exceed the appraised value, and may insert such reduced amount in the report. R.S.O. 1970, c. 254, s. 122.

Registrar
may
examine
corporation
books, etc.

151.—(1) The Registrar or any person authorized under his hand and seal may, with the approval of the Minister, at any time within business hours, examine the books, vouchers, securities and documents of a corporation, and any officer or person in charge, possession, custody or control of the books, vouchers, securities or documents refusing or neglecting to afford such examination is guilty of an offence, and the corporation, if registered, is liable to have its registry suspended.

Cancellation
of registry
for refusing
examination

(2) The corporation, on continued refusal or neglect to afford such examination, is liable to have its registry can-

celled or not renewed after termination of the current certificate.

(3) Where,

Special
audits

- (a) a corporation is three months in default in the delivery of the annual statement required by section 196; or
- (b) for eighteen consecutive months there has been no audit of the books and accounts of the corporation; or
- (c) there is filed with the Registrar a requisition for audit bearing the signatures and addresses of at least twenty-five shareholders of the corporation holding shares upon which not less than \$10,000 in the aggregate has been paid in, alleging specific fraudulent or illegal acts or repudiation of contracts or alleging that the accounts of the corporation have been materially and wilfully falsified and accompanied by a deposit of \$1,000 or such other sum as the Registrar may fix as security for the cost of the audit,

the Registrar may appoint an accountant who shall under his direction make a special audit of the books, accounts and securities of the corporation and make to the Registrar a written report thereon.

(4) A special auditor so appointed is sufficiently accredited if he delivers to the secretary or to any managing officer of the corporation a written statement under the hand and seal of the Registrar to the effect that the Registrar has nominated him to audit the books, accounts and securities of the corporation.

Credentials
of auditor

(5) The expense of a special audit shall be borne by the corporation, and the auditor's account therefor when approved in writing by the Registrar is conclusive and shall be paid forthwith.

Expenses
of special
audit

(6) Where the facts alleged in the requisition appear to the Registrar to have been partly or wholly disproved by the audit, and he considers it just, he may pay the costs of the audit partly or wholly out of the deposit.

Payment of
costs out
of deposit

(7) The deposit or the balance, if any, remaining after payment of such costs shall be returned to the requisitioning shareholders upon the order of the Registrar.

Return of
balance of
deposit

Where
corporation
resists or
obstructs
audit

(8) Where a corporation, by its officer, employee, servant or agent having in his custody, possession or power the funds, books, vouchers, securities or documents of the corporation, refuses to have them duly audited as provided by section 100, or by this section or by section 152, or obstructs an auditor or examiner in the performance of his duties, the Registrar, upon proof of the fact, may suspend or cancel the registry of the corporation, or may terminate the registry upon the expiry of the current certificate of registry.

Report of
special
auditor

(9) If the report of the special auditor appears to the Registrar to disclose fraudulent or illegal acts or repudiation of contracts or that the accounts of the corporation have been materially and wilfully falsified, he shall notify the corporation accordingly and furnish to it a copy of the report and the corporation shall within two weeks thereafter file a statement with the Registrar replying to such report.

Registrar's
decision

(10) Upon consideration of the report and the corporation's statement in reply and such further evidence, documentary or oral, as he may require, the Registrar shall by a decision in writing continue, suspend or cancel the registry of the corporation or impose such terms or conditions upon the registry of the corporation, as he considers appropriate. R.S.O. 1970, c. 254, s. 123.

Appoint-
ment of
examiner

152.—(1) The Minister, of his own motion or upon an application being made to him in writing, may appoint any competent person to make a special examination and audit of a corporation's books, accounts and securities, and to inquire generally into the conduct of its business.

Evidence
upon which
inquiry to
be ordered

(2) The application shall be supported by such evidence as the Minister may require for the purpose of showing that there is good reason for requiring the investigation to be made and that it is not prompted by malicious motives.

Security
for costs

(3) The Minister may require security for the payment of the costs of the inquiry to be given before appointing the examiner. R.S.O. 1970, c. 254, s. 124 (1-3).

Powers of
examiner
as to
summoning
witnesses,
etc.
R.S.O. 1980,
c. 411

(4) The examiner may summon witnesses and take evidence under oath, and generally, for the purposes of such examination, audit and inquiry, has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such examination, audit or inquiry as if it were an inquiry under that Act. R.S.O. 1970, c. 254, s. 124 (4); 1971, c. 49, s. 18.

Report to
Minister

(5) Upon the conclusion of the examination, audit and inquiry, the examiner shall make his report in writing to the Minister.

(6) The Registrar may, by notice in writing, whenever he sees fit, require a corporation to make, in addition to its annual or other returns required by this Act, a return verified by affidavit of one of its officers, or to furnish information verified in the same manner upon any subject connected with its affairs, and it shall make the return within the time mentioned in the notice. Additional information

(7) The notice may be given to the president, secretary, managing director or other officer or officers having apparent control of the books of the corporation, or any of them in Ontario, and non-compliance with the notice is an offence. R.S.O. 1970, c. 254, s. 124 (5-7). Notice

153.—(1) A notice published in *The Ontario Gazette* over the name of the Registrar or assistant registrar is, without further proof, *prima facie* evidence of the facts set forth in the notice. R.S.O. 1970, c. 254, s. 125 (1). Notice to be evidence

(2) All copies of returns, reports or other official publications of the Registrar purporting to be printed by the Queen's Printer, or to be printed by order of the Assembly, shall, without further proof, be admitted as evidence of such publication and printing and as true copies of the originals. R.S.O. 1970, c. 254, s. 125 (2); 1973, c. 2, s. 4 (3). Official publications

(3) A certificate under the hand of the Registrar or assistant registrar and the Registrar's seal of office that on a stated day the corporation mentioned therein was or was not registered, or that the registry of a corporation was originally granted, or was renewed, suspended, revived or cancelled, on a stated day, is *prima facie* evidence of the facts stated in the certificate. Certificate as to registry

(4) Copies of, or extracts from, any book, record, instrument or document in the office of the Registrar or of or from any official instrument or document issued under this Act shall, if certified by him or by the assistant registrar to be true copies or extracts and sealed with the Registrar's seal of office, be held as authentic and are *prima facie* evidence of the same legal effect as the original. R.S.O. 1970, c. 254, s. 125 (3, 4). Copies of or extracts from official documents

154.—(1) The Registrar personally shall visit or cause a duly qualified member of his staff to visit at least once annually the head office of each registered corporation, other than a corporation as to which he adopts the inspection of another government, and he shall inspect and examine the statements of the condition and affairs of each corporation and make such inquiries as are necessary to ascertain its Annual inspection of registered corporations

condition and ability to provide for the payment of its liabilities as and when they become due, and whether or not it has complied with this Act, and the Registrar shall report thereon to the Minister as to all matters requiring his attention and decision.

Further
inspection

(2) Where the Registrar considers it necessary and expedient to make a further examination into the affairs of a corporation and so reports to the Minister, the Minister may in his discretion instruct the Registrar to visit or cause a duly qualified member of his staff to visit any branch office or offices of the corporation to inspect and examine into its affairs and to make such further inquiries as the Minister may require.

Material to
be furnished
on
inspection

(3) For the purpose of an examination, the corporation shall prepare and submit to the Registrar such statements with respect to its business, finances or other affairs, in addition to the statement mentioned in this Act, as the Registrar may require, and the officers, agents and servants of the corporation shall cause their books to be open for inspection and shall otherwise facilitate such examination so far as it is in their power.

Production
of books

(4) In order to facilitate the examination of the books and records of a corporation, the corporation may be required by the Registrar, with the approval of the Minister, to produce the books and records at the head office or chief office of the corporation in Ontario, or at such other convenient place as the Registrar may direct.

Examination

(5) The Registrar, or any person authorized by the Minister, may examine under oath the officers, agents or servants of the corporation for the purpose of obtaining any information that he considers necessary for the purpose of the examination.

Expense of
further
inspection

(6) Where an examination is made under subsection (2) of any branch or other office situated outside Ontario, the corporation shall pay the account in connection with the examination upon the certificate of the Registrar approved by the Minister. R.S.O. 1970, c. 254, s. 126.

Inquiries by
Registrar

155.—(1) The Registrar may address any inquires to a registered corporation or to the president, manager or secretary thereof for the purpose of ascertaining its condition and ability to meet its obligations or as to the conduct of its business and it is the duty of any corporation or officer so addressed to reply promptly in writing to any such inquiry.

(2) The Registrar may require a corporation to forward a copy of any letter addressed to the corporation by the Registrar and any answer thereto to each director of the corporation and upon such requirement being made the president of the board of directors shall instruct the secretary of the corporation to include a copy of such letter and the answer thereto in the minutes of the meeting of the directors next following the requirement of the Registrar.

Notice to
directors

(3) The Registrar may, in his discretion, embody in his annual report to the Minister the inquiries and requirement made by him under this section and the answers thereto. R.S.O. 1970, c. 254, s. 127.

Answers
may be
included in
Registrar's
annual report

156.—(1) If, as the result of the examination, the Registrar is of opinion that the assets of the corporation are insufficient to justify its continuance in business, he shall make a special report to the Minister on the condition of the corporation.

Special
report where
condition
unsound

(2) If the Minister, after a reasonable time has been given to the corporation to be heard by him, and upon such further inquiry and investigation as he sees fit to make, reports to the Lieutenant Governor in Council that he agrees with the opinion of the Registrar, the Lieutenant Governor in Council may, if the Lieutenant Governor in Council also concurs in the opinion, suspend or cancel the registry of the corporation, and the corporation shall thereupon cease to transact further business, but the Minister may, during such suspension or cancellation, issue such conditional registry as he considers necessary for the protection of the public.

Power to
cancel or
suspend
registry

(3) If the Minister considers it advisable, the conditional registry may provide that the corporation shall, during the continuance of the conditional registry, arrange for the sale of its assets and for the transfer of its liabilities.

Sale and
transfer
under
conditional
registry

(4) If upon the expiration of the conditional registry no arrangement satisfactory to the Minister has been made for such sale and transfer, and if in the opinion of the Minister the corporation's condition is not then such as to warrant the restoration of the corporation's registry, the registration shall be cancelled. R.S.O. 1970, c. 254, s. 128.

When
registration
cancelled

157.—(1) Where it comes to the attention of the Registrar that a provincial corporation may not be able to account satisfactorily for any assets that appear on its books and, upon investigation, the Registrar is satisfied that any such assets cannot be satisfactorily accounted for and that the circumstances so warrant, he may immediately take possession

Assets not
accounted for

and control of the assets of such corporation and maintain such control on his own initiative for a period of seven days and, with the concurrence of the Minister, for any longer period that the Minister may order for the purpose of the Registrar's report under subsection 158 (1).

Release of
assets

(2) The Registrar may release any assets under his possession and control that he considers advisable for the purposes of the corporation. R.S.O. 1970, c. 254, s. 129.

Report to
Minister

158.—(1) Where the Registrar is of the opinion that the assets of a provincial corporation are not sufficient to meet its liabilities in respect of moneys received in trust or borrowed he shall so report to the Minister.

Remedial
powers
of the
Minister

(2) Where the Minister, after full consideration of the matter and after a reasonable time has been given to the corporation to be heard by him, and upon such further inquiry or investigation as he sees fit to make, agrees with the opinion of the Registrar under subsection (1), the Minister may do one or both of the following,

- (a) make the corporation's registry subject to such limitations or conditions as he considers appropriate;
- (b) prescribe a time within which the corporation shall make good any deficiency of assets.

Subsequent
action

(3) If the corporation fails to make good any deficiency of assets within the time that has been prescribed under clause (2) (b), or any extension thereof subsequently given by the Minister, the Minister shall submit the report of the Registrar to the Lieutenant Governor in Council and the Lieutenant Governor in Council, if the Lieutenant Governor in Council agrees with the report, may order the Registrar to take possession and control of the assets of the corporation and the Registrar shall deliver a copy of the order to an officer of the corporation.

Appoint-
ment of
appraisers

(4) For the purposes of this section, the Minister may appoint such persons as he considers necessary to value and appraise the assets and liabilities of the corporation and report upon its condition and its ability, or otherwise, to meet its liabilities. R.S.O. 1970, c. 254, s. 130.

Power of
Registrar
upon taking
control

159.—(1) If so ordered by the Lieutenant Governor in Council under section 158, the Registrar shall take possession and control of the assets of a provincial corporation and shall thereafter conduct its business and take such steps as in his opinion should be taken toward its rehabilitation,

and for such purposes the Registrar has all the powers of the board of directors of the corporation, and, without limiting the generality of the foregoing, the Registrar may,

- (a) exclude the directors, officers, servants and agents of the corporation from the premises, property and business of the corporation; and
- (b) carry on, manage and conduct the operations of the corporation and in the name of the corporation preserve, maintain, realize, dispose of and add to the property of the corporation, receive the incomes and revenues of the corporation and exercise all the powers of the corporation.

(2) While the Registrar has possession and control of the assets of a corporation under this section, the Minister may direct the Registrar to apply to the court for an order for the winding up of the corporation under Part VI of the *Corporations Act*. Application to court
R.S.O. 1980,
c. 95

(3) Where the Registrar is in possession and control of the assets of a corporation and is conducting its business, he may appoint one or more persons to manage and operate the business of the corporation, and, Appointment of managers

- (a) each person so appointed is a representative of the Registrar; and
- (b) the remuneration of any such person, other than an employee of the office of the Registrar, shall be fixed by the Minister.

(4) Whenever the Minister believes that a corporation whose assets are in the possession and control of the Registrar meets all the requirements of this Act and that it is otherwise proper for the corporation to resume possession and control of its assets and the conduct of its business, the Minister may, in writing, direct the Registrar to relinquish to the corporation the possession and control of its assets, and from and after the date specified in such direction the powers of the Registrar under this section cease. Relinquishing control

(5) If the Minister, on the report of the Registrar, considers that further efforts to rehabilitate a corporation whose assets are in the possession and control of the Registrar would be futile, he may, in writing, direct the Registrar to relinquish to the corporation the possession and control of its assets, and from and after the date specified in such direction the powers of the Registrar under this section cease. Where rehabilitation efforts futile

**Expenses of
proceedings**

(6) The expenses of the Registrar incurred in rehabilitation proceedings under this section and sections 157 and 158 shall be paid,

- (a) where the corporation that is the subject of the proceedings is a loan corporation, by all loan corporations; or
- (b) where the corporation that is the subject of the proceedings is a trust company, by all trust companies,

and the share of each shall be in the same proportion as its total net income earned in Ontario in its last preceding fiscal year bears to the total net income earned in Ontario of all loan corporations or trust companies, as the case may be, in the last preceding fiscal year of each.

**Advisory
committee**

(7) The corporations required to bear the said expenses of the Registrar may appoint a committee of not more than six members to advise the Registrar in respect of all matters pertinent to the rehabilitation of the corporation whose assets are in the possession and control of the Registrar. R.S.O. 1970, c. 254, s. 131.

Appeal

160.—(1) Notwithstanding section 159, a provincial corporation may appeal to the Divisional Court from any order made by the Lieutenant Governor in Council under section 158 within thirty days after the delivery of a copy of the order to an officer of the provincial corporation, in accordance with the rules of court. R.S.O. 1970, c. 254, s. 132 (1), *revised*.

Stay

(2) An order of the Lieutenant Governor in Council under section 158 shall take effect immediately, but where there is an appeal, the Divisional Court may grant a stay until any appeal is disposed of.

**Material
on appeal**

(3) The Minister shall certify to the Registrar of the Supreme Court,

- (a) the decision of the Lieutenant Governor in Council;
- (b) the reports of the Registrar to the Minister or the Lieutenant Governor in Council;
- (c) the record of any hearing; and
- (d) all written submissions by the appellant to the Registrar, the Minister or the Lieutenant Governor in Council.

(4) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section. Representation

(5) Where an appeal is taken under this section, the court may by order direct the Registrar to take such action as the court considers proper or refrain from taking any action specified in the order and the Registrar shall act accordingly. Order

(6) The order of the court is final and there is no appeal therefrom, but, notwithstanding the order, the Minister and the Lieutenant Governor in Council have power to make any further reports and orders on new material or where there is a material change in the circumstances, and any such further order is subject to appeal under this section. R.S.O. 1970, c. 254, s. 132 (2-6). Further decision

REGISTRATION

161.—(1) Applications for initial registry shall be made according to a form to be supplied by the Registrar, and the applicant shall deliver to the Registrar the application duly completed, together with such information, material and evidence as the form may require. Applications for initial registry

(2) The applicant shall, if required, furnish such further information, material and evidence, and give such public notice of the application as the Registrar may direct. Material to be furnished

(3) The applicant shall file with the application a statement in the form required by the Registrar of the financial condition and affairs of the corporation on the 31st day of December next preceding or on the last day of the fiscal year of the corporation, if the last day is not more than twelve months before the filing of the statement, and the statement shall be signed and verified as prescribed by section 101. R.S.O. 1970, c. 254, s. 133. Financial statement to accompany application

162.—(1) Where a corporation applying for registry has its head office outside Ontario, the application shall be accompanied by a power of attorney from the corporation to an agent or agents resident in Ontario. Registration of extra-provincial corporations

(2) The power of attorney shall be under the seal of the corporation, and shall be signed by the president and secretary or other proper officers thereof in the presence of a witness who shall make oath as to its due execution. Execution of power of attorney

(3) The official positions in the corporation held by the officers signing the power of attorney shall be verified by the oath of a person cognizant of the facts. Authentication

Contents of
power of
attorney

(4) The power of attorney shall declare at what place in Ontario the chief agency of the corporation is, or is to be established, and shall expressly authorize the agent or agents to receive service of process in all actions and proceedings against the corporation in Ontario for any liability incurred by the corporation therein, and also to receive from the Registrar all notices that the law requires to be given, or that it is thought advisable to give, and shall declare that service of process for or in respect of such liability on any of the agents and receipt of the notices at the chief agency or personally by any of the agents is legal and binding on the corporation.

Filing of
power of
attorney

(5) The power of attorney and the affidavit of execution shall be filed with the Registrar.

Authority
conferred by
power of
attorney

(6) The power of attorney may confer upon the agent or agents any further or other powers that the corporation considers advisable.

Effect of
copy as
evidence

(7) The production of a copy of the power of attorney certified by the Registrar is sufficient evidence for all purposes of the power and authority of the person or persons therein named to act on behalf of the corporation in the manner and for the purposes set forth in the certified copy.

Changes in
chief agent
or agency

(8) Whenever the corporation changes any of its agents or the chief agency in Ontario, it shall file with the Registrar a similar power of attorney, stating the change or changes and containing a similar declaration as to service of process and notices.

Service of
process
thereafter

(9) After the power of attorney is filed, any process in any action or proceeding against the corporation for a liability incurred in Ontario may be validly served on the corporation at its chief agency, but nothing in this section renders invalid service in any other mode in which a corporation may be lawfully served.

Application
of section

(10) This section applies notwithstanding any special or other legislation of Ontario affecting any registered corporation. R.S.O. 1970, c. 254, s. 134.

Recording
registry,
entries on
register

163.—(1) The Registrar shall cause to be entered on the proper register the name of every corporation entitled to registry, together with the date of the commencement of the registry and the term for which the registry is to endure.

Term of
registry

(2) The term begins on the date of such commencement and ends not later than the 30th day of June next ensuing.

(3) The Registrar shall also cause to be entered on the register the place where the head office and the chief agency, if any, are situate, and if there is a chief agency, the name and address of the chief agent and of the agent or agents appointed under section 162. Particulars to be entered

(4) If the registry is suspended, revived, revoked or cancelled, the date of and authority for such suspension, revivor, revocation or cancellation shall also be entered. Entering suspension, etc., of registry

(5) The Registrar shall issue under his hand and seal of office to every registered corporation a certificate of registry, setting forth that the corporation is entitled to registry as a (*describing the corporation*) under this Act, and that the corporation is accordingly registered for the term stated in the certificate. Issue of certificate of registry

(6) Every certificate of registry shall specify the first day and the last day of the term for which the corporation is registered, and the corporation so registered shall be deemed to be registered from the commencement of the first day to the end of the last day so specified. Commencement and end of term

(7) A certificate of registry that does not specify an earlier date of expiry, unless sooner suspended or cancelled, remains valid until the next ensuing 30th day of June, when, if the corporation has complied with the law and continues solvent, it is entitled to a certificate of renewed registry, and so on every succeeding 30th day of June thereafter. Duration of registry

(8) Notwithstanding failure to comply with this Act within the prescribed time, the Registrar may, upon payment of the prescribed fee, grant an interim certificate of registry or extend the currency of a subsisting certificate. Interim certificate
R.S.O. 1970, c. 254, s. 135.

164.—(1) No corporation shall be registered under a name identical with that under which any other existing corporation is registered, or under any other name likely, in the opinion of the Registrar, to deceive, mislead or confuse the public as to its identity. Restrictions upon use of names

(2) No registered corporation shall be registered under a new or different name except upon proof that such new or different name is authorized by law. New names

(3) Where a provincial corporation desires to adopt a name different from that by which it was incorporated, or where, in the opinion of the Registrar, the name by which the Change of corporate name

corporation was incorporated may be confused with that of another existing corporation, the Lieutenant Governor in Council may change the name of the corporation to some other name to be stated in the order in council.

Not to affect
rights or
obligations

(4) No change of name affects the rights or obligations of the corporation. R.S.O. 1970, c. 254, s. 136 (1-4).

Change of
head office

(5) The location of the head office of a provincial corporation may be changed in like manner. R.S.O. 1970, c. 254, s. 136 (5); 1972, c. 101, s. 15.

Notice

(6) Such public notice shall be given of any change of name or head office, and of any application for such change, in *The Ontario Gazette* and otherwise as the Registrar may direct. R.S.O. 1970, c. 254, s. 136 (6).

What
admissible
to registry

165.—(1) Trust companies whose powers do not include that of buying and selling land as beneficial owner except as authorized by this Act and do not exceed the powers that are conferred upon trust companies under this Act and loan corporations that are solvent and fall within one of the following classes, may, upon due application, be admissible to registry:

1. Corporations duly constituted under the law of Ontario.
2. Corporations which, being duly incorporated or constituted under the laws of any other province of Canada, or of Canada, or of the United Kingdom, were in actual, active and *bona fide* operation in Ontario on the 16th day of April, 1912, but such corporations are admissible to registry only on due application and with the approval of the Minister and on such terms and conditions as he may prescribe.
3. Corporations duly constituted as joint stock corporations under the laws of any other province of Canada or of Canada that issue permanent shares having capital paid in and unimpaired of at least \$1,000,000, together with such surplus as the Minister in the circumstances may require, and who undertake to comply with and be bound by the provisions of sections 77 to 82 to the same extent as if they were a provincial corporation. R.S.O. 1970, c. 254, s. 137 (1); 1974, c. 88, s. 16.

Registry
validated

(2) Any registry purporting to have been made before the 1st day of May, 1914, by any corporation mentioned in

paragraph 2 of subsection (1) shall be deemed for all purposes to have been a registry under this Act from the date of commencement of such purported registry. R.S.O. 1970, c. 254, s. 137 (2).

(3) Upon the application for registration of a corporation, ^{Registry on terms} other than a provincial corporation, the Registrar may recommend to the Minister that the corporation be admitted to registry on terms and conditions and the Minister, if he so approves, may direct that the corporation be admitted to registry on such terms and conditions as he may prescribe, including a deposit of approved securities with him to such amount as he considers necessary from time to time and, so long as such conditions are satisfied and no final judgment against the corporation or order for its winding up or for distribution of its assets is given to the Minister, the corporation is entitled to receive the interest upon the securities forming the deposit. 1972, c. 101, s. 16.

(4) A trust company duly constituted as a joint stock ^{When extra-provincial trust company may be registered} corporation under the laws of any other province of Canada shall not be registered unless it is shown to the satisfaction of the Registrar that, in the locality in which the company proposes to carry on business, there exists a public necessity for a trust company or for an additional trust company and the Registrar is satisfied that the fitness of the applicant to discharge the duties of a trust company is such as to command the confidence of the public and that the public convenience and advantage will be promoted by granting registration to the company.

(5) Any trust company authorized by a special Act of ^{Company authorized by special Act} Ontario to carry on business in Ontario is not barred from registry merely because its powers exceed those conferred upon trust companies by this Act. R.S.O. 1970, c. 254, s. 137 (4, 5).

(6) No other corporation shall be registered. R.S.O. 1970, ^{No others} c. 254, s. 137 (7).

166.—(1) Upon proof that registry or a certificate of ^{Suspension or cancellation of registry} registry has been obtained by fraud or mistake, or that a corporation exists for an illegal purpose, or is insolvent, or has failed to pay its obligations, or has wilfully and after notice from the Registrar contravened any of the provisions of this Act, or of the Act or instrument incorporating it, or of any law in force in Ontario, or has ceased to exist, its registry may be suspended or cancelled by the Registrar.

Notice to be
given to the
corporation

(2) On the suspension or cancellation of the registry of any existing corporation, the Registrar shall cause notice in writing thereof to be delivered to it.

Notice

(3) Where the corporation has ceased to exist, the notice shall be published in *The Ontario Gazette*.

Corporation
to cease
business
except for
winding-up
purposes

(4) After such suspension or cancellation, or after termination of registry without renewal, the corporation shall, unless again registered, cease to transact or undertake business in Ontario, except so far as is necessary for the winding up of its business, but any liability incurred by it may be enforced against it as if such suspension, cancellation or termination had not taken place. R.S.O. 1970, c. 254, s. 138.

Decision of
Registrar to
be in writing
and to be
delivered to
corporation

167. Where in any disputed case the Registrar decides that a corporation is or is not legally entitled to registry, or to renewal of registry, or where he suspends, revives or cancels the registry of a corporation, his decision, except as otherwise provided, shall be given in writing, and he shall cause a copy thereof certified under his seal of office to be delivered to the corporation. R.S.O. 1970, c. 254, s. 139.

Review

168.—(1) Any corporation whose registration or right to registration is affected by a decision of the Registrar may, by notice in writing served upon the Registrar within thirty days after the delivery of the copy of the decision under section 167, request a hearing and review of the matter by the Registrar.

Notice of
hearing

(2) Where a hearing and review is requested, the Registrar shall send a notice in writing to the corporation notifying it of the time and place of the hearing.

Evidence

(3) Upon a review, the Registrar may hear such evidence as is submitted to him that in his opinion is relevant to the matter in dispute, and he is not bound by any law respecting the admissibility of evidence, and all oral evidence submitted shall be taken down in writing and together with such documentary evidence and things as are received in evidence by the Registrar form the record.

Powers on
review

(4) Upon a review, the Registrar may confirm or revoke his former decision or make alterations therein or addition thereto as he considers proper.

Decision
to be
delivered

(5) Notice of his decision made upon a review shall be delivered forthwith to the corporation that requested the review.

(6) Where the Registrar has reviewed a decision and ^{Appeal} given his decision upon the review, the corporation that requested the review may appeal to the Divisional Court in accordance with the rules of court. R.S.O. 1970, c. 254, s. 140 (1-6), *revised*.

(7) The Registrar shall certify to the Registrar of the ^{Certificate of Registrar} Supreme Court,

(a) the decision that has been reviewed by the Registrar ;

(b) the decision of the Registrar upon the review, together with any statement of reasons therefor ;

(c) the record of the review ; and

(d) all written submissions to the Registrar and other material that in the opinion of the Registrar are relevant to the appeal. R.S.O. 1970, c. 254, s. 140 (8).

(8) The Attorney General may designate counsel to assist ^{Counsel} the court upon the hearing of any appeal taken under this section. R.S.O. 1970, c. 254, s. 140 (9); 1972, c. 1, s. 9 (7).

(9) Where an appeal is taken under this section, the court may by its order direct the Registrar to make such ^{Order of court} decision as the Registrar is authorized to do under this Act and as the court considers proper, and thereupon the Registrar shall act accordingly.

(10) The order of the court is final and there is no appeal ^{Further decision} therefrom, but, notwithstanding the order, the Registrar has power to make any further decision upon new material or where there is a material change in the circumstances, and every such further decision is subject to this section. R.S.O. 1970, c. 254, s. 140 (10, 11).

169. The Registrar may at the request of the corporation, ^{Cancellation of registry on request of corporation} evidenced as he may direct, cancel its registry. R.S.O. 1970, c. 254, s. 141.

170. If on receiving an application for registry the Minister finds in the by-laws of the applicant anything ^{Minister may direct amendment of by-law} repugnant to this Act or to the law of Ontario, he may direct an amendment of the by-laws, and, upon their being amended as directed and returned certified as having been

so amended, the application may be proceeded with. R.S.O. 1970, c. 254, s. 142.

Return of
evidence as
to by-laws

171.—(1) Every corporation doing business in Ontario, if required so to do by the Registrar, shall furnish satisfactory evidence that any by-law has been duly passed and is a legal and valid by-law according to the Act or instrument incorporating the corporation and also that the by-law conforms to the law of Ontario.

Refusal to
furnish
evidence

(2) A corporation refusing or failing to furnish such evidence promptly is liable to have its registry suspended or cancelled. R.S.O. 1970, c. 254, s. 143.

Capital
requirement
before
registration

172. No trust company that was not registered on the 1st day of January, 1968, shall be registered to transact business in Ontario unless it has a capital paid in and unimpaired of at least \$1,000,000. R.S.O. 1970, c. 254, s. 144.

Representa-
tions that
standing of
corporation
is vouched
for by
Registrar

173.—(1) No corporation shall, under the penalty of becoming disentitled to registry or of having its registry suspended or cancelled, make, print, publish, circulate, authorize or be a party or privy to the making, printing, publishing or circulating of any statement or representation that its solvency or financial standing is vouched for by the Registrar or that the publication of its statement in his report is a warranty or representation of the solvency of the corporation or of the truth or accuracy of the statement in any particular.

Offence

(2) Any director, auditor, officer, servant, employee or agent of a corporation who makes or uses or authorizes or is party or privy to the making or using of any such statement or representation is guilty of an offence. R.S.O. 1970, c. 254, s. 145.

UNREGISTERED CORPORATIONS

No unregis-
tered cor-
poration to
undertake
business

174.—(1) No incorporated body or person acting in its behalf, other than a registered corporation and a person duly authorized by it to act in its behalf, shall undertake or transact in Ontario the business of a loan corporation or of a trust company. R.S.O. 1970, c. 254, s. 146 (1).

Matters
deemed
undertaking
business

(2) Any setting up or exhibiting of a sign or inscription containing the name of the corporation, or any distribution or publication of any proposal, circular, card, advertisement,

printed form or like document in the name of the corporation, or any written or oral solicitation on the corporation's behalf, or the advancing of funds of others in the purchase or lending on the security of mortgages that are assigned or registered in the name of the corporation, shall, both as to the corporation and as to the person acting or purporting to act on its behalf, be deemed undertaking the business of the corporation within the meaning of this section. 1972, c. 101, s. 17.

(3) Any promoter, organizer, manager, director, officer, ^{Offence} collector, agent, employee or person who undertakes or transacts any business of a corporation that is not registered under this Act is guilty of an offence. R.S.O. 1970, c. 254, s. 146 (3).

175. Any person, partnership, organization, society, association, company or corporation, not being a corporation registered under this Act or under the *Insurance Act*, assuming or using in Ontario a name that includes any of the words "Loan", "Mortgage", "Trust", "Trusts", or "Guarantee", in combination or connection with any of the words "Corporation", "Company", "Association" or "Society", or "Limited", or "Incorporated" or any abbreviations thereof, or in combination or connection with any similar collective term, or assuming or using in Ontario any similar name, or any name or combination of names that is likely to deceive or mislead the public is guilty of an offence, and any person acting on behalf of such person, partnership, organization, society, association, company or corporation is also guilty of an offence, but where any of such combinations of words formed part of the corporate name of a corporation duly incorporated by or under the authority of an Act of Ontario or of the Parliament of Canada before the 1st day of July, 1900, the combination may continue to be used in Ontario as part of the corporate name. R.S.O. 1970, c. 254, s. 147.

Use of certain words in name of company while un-registered
R.S.O. 1980, c. 218

176.—(1) In this section, "contract" means any contract, ^{Interpretation} agreement, undertaking or promise,

- (a) to pay to or for the contract holder any money or money's worth;
- (b) to sell, supply or procure any building or site or land or to bring about the purchase and sale or supply thereof; or
- (c) to construct or procure the construction of any house or building,

made upon any consideration that includes an entrance or membership fee, or expense contribution, initial, renewal,

periodical or recurrent, or that includes any periodical or recurrent contribution to a fund, or account, or source for, or intended or alleged to be for, the carrying out of such contract, and includes any contract, agreement, undertaking or promise, the benefit of which to the contract holder paying any such consideration is to be wholly or partly postponed or deferred until other contract holders have been provided for, or is to depend upon the number or the persistence of the other contract holders, or upon the accession of new contract holders, or upon the order or sequence of the contract.

Prohibition
of certain
contracts
R.S.O. 1980,
c. 218

(2) Any person, partnership, organization, society, association, company or corporation, not being a corporation registered under this Act or under the *Insurance Act*, undertaking or effecting, or offering to undertake or effect, any contract is guilty of an offence, and any person acting on behalf of such person, partnership, organization, society, association, company or corporation, is also guilty of an offence, and the convicting provincial offences court, in addition to imposing the prescribed penalty, may at the time of conviction or thereafter make such order for the restitution of the money that was unlawfully taken as to the court seems just, and, in default of compliance with such order, the offender is liable to imprisonment for a term of not more than twelve months. R.S.O. 1970, c. 254, s. 148.

Use of sign,
name or
document
inducing
illegal
contract

177. Where in any case arising under section 174, 175 or 176 it is found by the provincial offences court that the person, partnership, organization, society, company or corporation charged or his or its agent is exhibiting or using any sign, inscription or name, or distributing, using or publishing any document, including any proposal, circular, card, advertisement, notice, application, contract or printed form that, in the opinion of the court, induces, or tends to induce, a contravention of any such section, or is likely to deceive or mislead the public either as to the party or the status of the party undertaking the contract, or as to the nature, terms or effect of the contract, the court may summarily order the discontinuance of such sign, inscription, name or document, and non-compliance with such order is an offence. R.S.O. 1970, c. 254, s. 149.

INVESTMENTS

Investments
of loan
corporations

178.—(1) A registered loan corporation may purchase or invest in,

mortgages

(a) ground rents, mortgages, charges or hypothecs upon improved real estate or leaseholds in Ontario or

elsewhere where the corporation is carrying on business, but the amount paid for the mortgage, charge or hypothec, together with the amount of indebtedness under any mortgage, charge or hypothec on the real estate or leasehold ranking equally with or prior to the mortgage, charge or hypothec in which the purchase or investment is made, shall not exceed three-quarters of the value of the real estate or leasehold to which the mortgage, charge or hypothec relates;

- (b) mortgages, charges or hypothecs upon improved real estate or leaseholds in Canada, notwithstanding that the amount paid for the mortgage, charge or hypothec exceeds three-quarters of the value of the real estate or leasehold, if the loan for which the mortgage, charge or hypothec is security is an approved loan or an insured loan under the *National Housing Act* (Canada). N.H.A.
mortgages

R.S.C. 1970,
c. N-10
- (c) mortgages, charges or hypothecs on improved real estate or leaseholds in Canada or in any country where the corporation is carrying on business, or bonds or notes secured by such mortgages, charges or hypothecs, notwithstanding that the mortgage, charge or hypothec exceeds the amount that the corporation is otherwise authorized to invest if the excess is guaranteed or insured by or through an agency of the government of the country in which the real estate or leasehold is situated or of a province or state of that country or is insured by a policy of mortgage insurance issued by an insurance company licensed or registered under the *Canadian and British Insurance Companies Act* (Canada), the *Foreign Insurance Companies Act* (Canada) or the *Insurance Act* or similar legislation of any province or territory of Canada; insured
mortgages

R.S.C. 1970,
cc. I-15, I-16

R.S.O. 1980,
c. 218
- (d) mortgages or assignments of such life insurance policies as have at the date of the purchase or investment an ascertained cash surrender value admitted by the insurer; mortgages
and
assignments
of life
insurance
policies
- (e) the debentures, bonds, stock or other securities of or guaranteed by the Government of Canada or of or guaranteed by the government of any province of Canada, or of or guaranteed by the government of the United Kingdom, or of any of Her Majesty's dominions, colonies or dependencies, or of any state forming part of any such dominion, colony or dependency, or of or guaranteed by any foreign government
bonds

country or state forming part of such foreign country where the interest on the securities of such foreign country or state has been paid regularly for the previous ten years, or of any municipality or school corporation in Canada or elsewhere where the corporation is carrying on business, or guaranteed by any municipal corporation in Canada, or secured by rates or taxes levied under the authority of the government of any province of Canada on property situated in such province and collectable by the municipalities in which the property is situated;

bonds, etc.,
issued or
guaranteed
by the
Inter-
national
Bank, etc.

- (f) the bonds, debentures or other securities issued or guaranteed by,
 - (i) the International Bank for Reconstruction and Development,
 - (ii) Inter-American Development Bank or by Asian Development Bank, or
 - (iii) the government of any country in which the corporation is carrying on business or a province or state thereof;

bonds
secured by
trust deed

- (g) the bonds, debentures, debenture stock, notes or other securities of any company that are secured by a mortgage or hypothec to a trust company either singly or jointly with another trustee upon improved real estate of such company or other assets of such company of the classes mentioned in clauses (a), (b), (c), (d) and (e);

federal
subsidy
bonds

- (h) the bonds or debentures of a company or institution incorporated in Canada that are secured by the assignment to a trust company in Canada of payments that the Government of Canada has agreed to make, if such payments are sufficient to meet the interest as it falls due on the bonds or debentures outstanding and to meet the principal amount of the bonds or debentures upon maturity;

provincial
subsidy
bonds

- (i) the bonds or debentures of a company or institution incorporated in Canada that are secured by the assignment to a trust company in Canada of payments that are payable, by virtue of an Act of a province of Canada, by or under the authority of the province, if such payments are sufficient to meet the interest as it falls due on the bonds or debentures outstanding and to meet the principal amount of the bonds or debentures upon maturity;

(j) obligations or certificates issued by a trustee to finance, for a company incorporated in Canada or for a company owned or controlled by a company so incorporated, the purchase of transportation equipment to be used on railways or public highways, if the obligations or certificates are fully secured by, ^{transportation equipment security}

(i) an assignment of the transportation equipment to, or the ownership thereof by, the trustee, and

(ii) a lease or conditional sale thereof by the trustee to the company;

(k) the bonds, debentures or other evidences of indebtedness of or guaranteed by, ^{debentures}

(i) any company if, at the date of investment, the preferred shares or the common shares of the company are authorized as investments by clause (l) or (m), or

(ii) any company where the earnings of the company in a period of five years ending less than one year before the date of investment have been equal in sum total to at least ten times and in each of any four of the five years have been equal to at least $1\frac{1}{2}$ times the annual interest requirements at the date of investment on all indebtedness of or guaranteed by it other than indebtedness classified as a current liability in the balance sheet of the company, and if the company at the date of investment owns directly or indirectly more than 50 per cent of the common shares of another company, the earnings of the companies during the said period of five years may be consolidated with due allowance for minority interests, if any, and in that event the interest requirements of the companies shall be consolidated and such consolidated earnings and consolidated interest requirements shall be taken as the earnings and interest requirements of the company; and for the purpose of this subclause, "earnings" means earnings available to meet interest charges on indebtedness other than indebtedness classified as a current liability;

preferred
shares

(l) the preferred shares of a company if,

- (i) the company has paid a dividend in each of the five years preceding the date of investment at least equal to the specified annual rate upon all its preferred shares, or
- (ii) the common shares of the company are, at the date of investment, authorized as investments by clause (m);

common
shares

(m) the fully paid common shares of a company that during a period of five years that ended less than one year before the date of purchase or investment has either,

- (i) paid a dividend in each year upon its common shares, or
- (ii) had earnings in each such year available for the payment of a dividend upon its common shares,

of at least 4 per cent of the average value at which the shares were carried in the capital stock account of the company during the year in which the dividend was paid or in which the company had earnings available for the payment of dividends, as the case may be;

real estate
for the
production
of income

(n) real estate or leaseholds for the production of income in Canada or in any country in which the corporation is carrying on business, either alone or jointly with any other corporation incorporated in Canada or with any insurance company transacting the business of insurance in Canada, if,

(i) a lease of the real estate or leasehold is made to, or guaranteed by,

(A) the government, or an agency of the government of the country in which the real estate or leasehold is situated, or of a province, state or municipality of that country, or

(B) a company, the preferred shares or common shares of which are, at the date of investment, authorized as investments by clause (l) or (m),

- (ii) the lease provides for a net revenue sufficient to yield a reasonable interest return during the period of the lease and to repay at least 85 per cent of the amount invested by the corporation in the real estate or leasehold within the period of the lease, but not exceeding thirty years from the date of investment,
- (iii) the total investment of the corporation in any one parcel of real estate or in any one leasehold does not exceed 2 per cent of the book value of the total assets of the corporation, and
- (iv) the book value of the investments of the corporation in real estate or leaseholds for the production of income under this clause and clause (o) do not exceed 10 per cent of the book value of the total assets of the corporation,

and the corporation may hold, maintain, improve, lease, sell or otherwise deal with or dispose of the real estate or leasehold;

- (o) real estate or leaseholds for the production of other real estate for the production of income income in Canada or in any country in which the corporation is carrying on business, either alone or jointly with any other corporation incorporated in Canada or with any insurance company transacting the business of insurance in Canada, if,
 - (i) the real estate or leasehold has produced, in each of the three years immediately preceding the date of investment, net revenue in an amount that, if continued in future years, would be sufficient to yield a reasonable interest return on the amount invested in the real estate or leasehold and to repay at least 85 per cent of that amount within the remaining economic lifetime of the improvements to the real estate or leasehold but not exceeding forty years from the date of investment, and
 - (ii) the total investment of a corporation in any one parcel of real estate or in any one leasehold does not exceed 2 per cent of the book value of the total assets of the corporation,

and the corporation may hold, maintain, improve, lease, sell or otherwise deal with or dispose of the real estate or leasehold; but the book value of the investments of the corporation in real estate or leaseholds for the production of income and subject to subclause (n) (iv) shall not exceed 5 per cent of the book value of the total assets of the corporation;

guaranteed
investment
certificates
of trust
companies

- (p) guaranteed investment certificates of a trust company incorporated in Canada, if, at the date of investment, the preferred shares or the common shares of the trust company are authorized as investments by clause (l) or (m);

credit union
term
deposits
R.S.O. 1980,
c. 102

- (q) term deposits accepted by a credit union as defined in the *Credit Unions and Caisses Populaires Act*. R.S.O. 1970, c. 254, s. 150 (1); 1972, c. 101, s. 18; 1980, c. 6, s. 4.

Investment
in national
housing

R.S.C. 1970,
c. N-10

- (2) In addition to investments it may make by lending on the security of or by purchasing mortgages, charges or hypothecs upon real estate pursuant to the *National Housing Act* (Canada), or any predecessor thereof, a registered loan corporation may invest its funds to an aggregate amount not exceeding 5 per cent of its total assets in Canada allowed by the Registrar in any other classes or types of investments pursuant to the said Acts, including the purchase of land, the improvement thereof, the construction of buildings thereon, and the management and disposal of such lands and buildings. R.S.O. 1970, c. 254, s. 150 (2).

Loans on
securities
by loan
corporations

- (3) A registered loan corporation may lend money on the security of,

- (a) any of the securities mentioned in clauses (1) (a), (b), (c), (d), (e) and (g);
- (b) improved real estate or leaseholds in Ontario or elsewhere where the corporation is carrying on business, but the amount of the loan, together with the amount of indebtedness under any mortgage, charge or hypothec on the real estate or leasehold ranking equally with or prior to the loan shall not exceed three-quarters of the value of the real estate or leasehold;
- (c) improved real estate or leaseholds in Ontario or elsewhere where the corporation is carrying on business, notwithstanding that the amount of the loan exceeds three-quarters of the value of the real estate or leasehold, if the loan is an approved loan or an insured loan under the *National Housing Act* (Canada);

- (d) real estate or leaseholds in Canada or in any country in which the corporation is carrying on business, notwithstanding that the loan exceeds the amount that the corporation is otherwise authorized to lend, if the excess is guaranteed or insured by, or through an agency of, the government of the country in which the real estate or leasehold is situate or of a province or state of that country or is insured by a policy of mortgage insurance issued by an insurance company licensed or registered under the *Canadian and British Insurance Companies Act* (Canada), the *Foreign Insurance Companies Act* (Canada), the *Insurance Act*, or similar legislation of any province or territory of Canada; and

R.S.C. 1970,
cc. 1-15, 1-16

R.S.O. 1980,
c. 218

- (e) the bonds, debentures, notes, shares or other securities mentioned in clause (1) (f), (h), (i), (j), (k), (l), (m) or (p), if the market value of the securities on which the loan is made at all times is not less than the amount of the loan and if also the amount loaned on the security of the shares of any one company does not at any time exceed 10 per cent of the market value of the total outstanding shares of such company. R.S.O. 1970, c. 254, s. 150 (3); 1973, c. 128, s. 16.

(4) If a registered loan corporation is designated a bank or lender, as the case may be, under the *Canada Student Loans Act*, the *Farm Improvement Loans Act* (Canada) or the *Fisheries Improvement Loans Act* (Canada) or the *Small Businesses Loans Act* (Canada), the corporation may make guaranteed loans under and in accordance with the provisions of any of those Acts for which it has been designated a bank or lender. R.S.O. 1970, c. 254, s. 150 (4).

Special
guaranteed
loans

R.S.C. 1952,
cc. S-17, F-3,
F-22, S-10

179. A registered loan corporation may make investments and loans not authorized by section 178 and not prohibited by any other section, subject to the following provisions,

"Basket
clause"
for loan
corporations

- (a) investments in real estate or leaseholds under this section shall be made only for the production of income, and may be made by the corporation in Canada or in any country in which the corporation is carrying on business, either alone or jointly with any corporation incorporated in Canada or with any insurance company transacting the business of insurance in Canada, and the corporation may hold, maintain, improve, develop, repair, lease, sell or

otherwise deal with or dispose of such real estate or leaseholds, but the total investment of a corporation under this section in any one parcel of real estate or in any one leasehold shall not exceed 1 per cent of the book value of the total assets of the corporation;

- (b) the total book value of the investments and loans made under this section and held by the corporation, excluding those that are, or at any time since acquisition have been, authorized as investments apart from this section, shall not exceed the larger of,
 - (i) 15 per cent of the corporation's unimpaired capital and reserve, or
 - (ii) such percentage as the Registrar may approve, not in excess of 7 per cent, of the book value of the total assets of the corporation; and
- (c) this section shall be deemed not to,
 - (i) enlarge the authority conferred by this Act to invest in mortgages, charges or hypothecs or to lend on the security of real estate or leaseholds, or
 - (ii) affect the operation of clause 178 (3) (e) as to the amount that may be loaned on the security of the shares of any one company. R.S.O. 1970, c. 254, s. 151.

Power of
loan
corporations
to invest in
shares of
certain
companies

180. Notwithstanding anything in section 178 or 185, a registered loan corporation may invest its funds in the fully paid shares of,

- (a) any company incorporated outside Canada to exercise the powers that a loan corporation incorporated in Ontario possesses;
- (b) any company incorporated to acquire, hold, maintain, improve, lease or manage real estate or leaseholds or to act as agent in the sale or purchase of real estate or leaseholds;
- (c) any company incorporated to offer public participation in an investment portfolio;
- (d) any company incorporated to provide a company mentioned in clause (c) with advisory, management or sales distribution services;

(e) with the prior approval of the Minister, any company incorporated to carry on any other business activity reasonably ancillary to the business of a loan corporation; or

(f) any company incorporated to provide financing by mortgage or otherwise on real property in the course of construction,

subject to such terms and conditions as may be prescribed by the Lieutenant Governor in Council. R.S.O. 1970, c. 254, s. 152; 1973, c. 128, s. 17.

181.—(1) A registered trust company may invest its own funds and moneys received for guaranteed investment or as deposits in any of the investments mentioned in subsection 178 (1), except that at all times at least 50 per cent of moneys received for guaranteed investment or as deposits shall be invested in or loaned upon such securities only as are authorized for trustees by section 26 of the *Trustee Act*.

Investments
by trust
companies

R.S.O. 1980,
c. 512

(2) The total book value of the investments of a registered trust company in real estate or leaseholds for the production of income under clause 178 (1) (n) shall not exceed in the case of its own funds 10 per cent of the book value of the total assets of such funds and, in the case of moneys received for guaranteed investment or as deposits, 10 per cent of such moneys and under clause 178 (1) (o), shall not exceed in the case of its own funds 5 per cent of the book value of the total assets of such funds and, in the case of moneys received for guaranteed investment or as deposits, 5 per cent of such moneys or 25 per cent of the unimpaired capital and reserve of the company, whichever is the greater, but the total amount invested under clauses (n) and (o) shall not exceed the maximum amount provided in clause (n), and the amount so invested in any one parcel of real estate or leaseholds for the production of income shall not exceed 2 per cent of the aggregate of the total assets of the corporation and the moneys received by it for guaranteed investment or as deposits.

Restriction
on amounts
of
investment
in
real estate

(3) In addition to investments it may make by lending on the security of or by purchasing mortgages, charges or hypothecs upon real estate under the *National Housing Act* (Canada) or any predecessor thereof, a registered trust company may invest its own funds to an aggregate amount not exceeding 5 per cent of its unimpaired capital and reserve and may, notwithstanding subsection (1), invest moneys received for guaranteed investment or as deposits to an aggregate amount not

Investments
in national
housing

R.S.C. 1970,
c. N-10

exceeding 5 per cent of such moneys in any other classes or types of investments pursuant to the said Act, including the purchase of land, the improvement thereof, the construction of buildings thereon, and the management and disposal of such lands and buildings.

Loans by
registered
trust
companies

(4) Subject to subsection (1), a registered trust company may lend its own funds and moneys received for guaranteed investment or as deposits on the security of,

- (a) any of the securities mentioned in clauses 178 (1) (a), (b), (c), (d), (e) and (g);
- (b) improved real estate or leaseholds in Ontario or elsewhere where the company is carrying on business, but the amount of the loan, together with the amount of indebtedness under any mortgage, charge or hypothec on the real estate or leasehold ranking equally with or prior to the loan, shall not exceed three-quarters of the value of the real estate or leasehold;
- (c) improved real estate or leaseholds in Ontario or elsewhere where the company is carrying on business, notwithstanding that the amount of the loan exceeds three-quarters of the value of the real estate or leasehold, where the loan is an approved loan or an insured loan under the *National Housing Act* (Canada);
- (d) mortgages, charges or hypothecs on improved real estate or leaseholds in Canada or in any country where the company is carrying on business, or bonds or notes secured by such mortgages, charges or hypothecs, notwithstanding that the amount secured by the mortgage, charge or hypothec exceeds the amount that the company is otherwise authorized to invest, if the excess is guaranteed or insured by, or through an agency of, the government of the country in which the real estate or leasehold is situated or of a province or state of that country or is insured by a policy of mortgage insurance issued by an insurance company licensed or registered under the *Canadian and British Insurance Companies Act* (Canada), the *Foreign Insurance Companies Act* (Canada), the *Insurance Act* or similar legislation of any province or territory of Canada; and

R.S.C. 1970,
c. N-10

R.S.C. 1970,
cc. I-15, I-16

R.S.O. 1980,
c. 218

- (e) the bonds, debentures, notes, shares or other securities mentioned in clause 178 (1) (f), (h), (i), (j), (k), (l), (m) or (p), if the market value of the securities on which the loan is made at all times is not less than the amount of the loan, and if the amount loaned on the security of the shares of any one company does not at any time exceed 10 per cent of the market value of the total outstanding shares of such company.

(5) If a registered trust company is designated a bank or lender, as the case may be, under the *Canada Student Loans Act*, the *Farm Improvement Loans Act* (Canada) or the *Fisheries Improvement Loans Act* (Canada), it may lend its own funds and moneys received for guaranteed investment or as deposits in guaranteed loans under and in accordance with the provisions of any of those Acts for which it has been designated a bank or lender. R.S.O. 1970, c. 254, s. 153.

Loans by
trust
companies
R.S.C. 1970,
cc. S-17, F-3,
F-22

182. A registered trust company may, with respect to its own funds and with respect to moneys received for guaranteed investment or as deposits, make investments and loans not authorized by section 181 and not prohibited by any other section, subject to the following provisions,

"Basket
clause" for
registered
trust
companies

- (a) investments in real estate or leaseholds under this section shall be made only for the production of income, and may be made by the company in Canada or in any country in which the company is carrying on business, either alone or jointly with any corporation incorporated in Canada or with any insurance company transacting the business of insurance in Canada, and the company may hold, maintain, improve, develop, repair, lease, sell or otherwise deal with or dispose of such real estate or leaseholds, but the total investment of a company under this section in any one parcel of real estate or in any one leasehold shall not exceed 1 per cent of the aggregate of the unimpaired capital and reserve of the company and the moneys held by it for guaranteed investment or as deposits;
- (b) the total book value of the investments and loans made under this section and held by the company, excluding those that are or at any time since acquisition have been authorized as investments apart from this section, shall not exceed the larger of,
 - (i) 15 per cent of the company's unimpaired capital and reserve, or

- (ii) such percentage as the Registrar may approve, not in excess of 7 per cent, of the aggregate of the unimpaired capital and reserve of the company and the moneys held by it for guaranteed investment or as deposits; and

(c) this section shall be deemed not to,

- (i) enlarge the authority conferred by this Act to invest in mortgages, charges or hypothecs or to lend on the security of real estate or leaseholds, or

- (ii) affect the operation of subsections 181 (1) and (2) or the operation of clause 181 (4) (e) as to the amount that may be loaned on the security of the shares of any one company. R.S.O. 1970, c. 254, s. 154.

Power of
registered
trust
companies
to invest
in shares
of certain
companies

183. Notwithstanding anything in section 181 or 185, a registered trust company may invest its own funds in the fully paid shares of,

- (a) any company incorporated outside Canada to exercise the powers set forth in section 110;
- (b) any company incorporated to acquire, hold, maintain, improve, lease or manage real estate or leaseholds or act as agent in the sale or purchase of real estate or leaseholds;
- (c) any company incorporated to offer public participation in an investment portfolio;
- (d) any company incorporated to provide a company mentioned in clause (c) with advisory, management or sales distribution services;
- (e) a loan corporation within the meaning of this Act;
- (f) with the prior approval of the Minister, any company incorporated to carry on any other business activity reasonably ancillary to the business of a trust company; or
- (g) any company incorporated to provide financing by mortgage or otherwise on real property in the course of construction,

subject to such terms and conditions as may be prescribed by the Lieutenant Governor in Council. R.S.O. 1970, c. 254, s. 155; 1973, c. 128, s. 18.

184.—(1) A corporation may take personal security as collateral for any advance or for any debt due to the corporation in addition to the security required by this Act. Personal security as collateral

(2) The corporation may do all acts that are necessary for advancing sums of money, and for receiving and obtaining repayment thereof, and for compelling the payment of all interest accruing due thereon, and the observance and fulfilment of any conditions annexed to the advance, and for enforcing the forfeiture of any term or property consequent on the non-fulfilment of such conditions or, of conditions entered into for delay of payment. Power to do acts and to exercise remedies

(3) No director or other officer of a corporation and no member of a committee of a corporation shall accept or be the beneficiary of any consideration or benefit for or on account of the negotiation of any loan, deposit, purchase, sale, payment or exchange made by or on behalf of the corporation. R.S.O. 1970, c. 254, s. 156. Receipt by directors, etc., of consideration for negotiating loans, etc.

185.—(1) On and after the 14th day of April, 1925, no corporation shall, Restrictions on amount of investments

(a) except as to securities issued or guaranteed by the Government of Canada or the government of any province of Canada or by any municipal corporation in Ontario,

(i) subject to subclause (iii), invest in any one security an amount exceeding 15 per cent of its own paid in capital stock and reserve funds, or

(ii) make a total investment in any one bank or company or in companies that to the knowledge of the corporation are associated maturing in more than one year, including the purchase of its stock or other securities and the lending to it on the security of its debentures, mortgages or other assets or any part thereof, of an amount exceeding 15 per cent of its own paid in capital stock and reserve funds, or

(iii) make an investment referred to in subclause (ii) maturing in one year or less in an amount that together with the amount invested to

which subclause (ii) applies exceeds in the case of a registered loan corporation the aggregate of 20 per cent of its own paid in capital stock and reserve funds and $2\frac{1}{2}$ per cent of moneys borrowed on debentures and by way of deposit under section 104 and, in the case of a registered trust company, the aggregate of 20 per cent of its own paid in capital stock and reserve funds and $2\frac{1}{2}$ per cent of moneys received as deposits and for guaranteed investment under sections 115 and 116;

- (b) make any investment the effect of which will be that the corporation will hold more than 20 per cent of the stock or more than 20 per cent of the debentures of any one corporation, company or bank;
- (c) make any investment in common shares the effect of which will be that the corporation will hold in the aggregate common shares carried on its books at more than 25 per cent of the book value of the total assets of the corporation if a loan corporation, or more than 25 per cent of the aggregate of the unimpaired capital and reserve of the company and the moneys held by it for guaranteed investment or as deposits if a trust company. R.S.O. 1970, c. 254, s. 157 (1); 1972, c. 101, s. 19.

Trust
company

(2) In the case of a trust company, subsection (1) applies only to the investment of its funds and of moneys received for guaranteed investment or as deposits under sections 116 and 115.

Not to
apply to
certain
companies

(3) This section does not apply to an investment in the paid up capital stock of a trust company having its head office in Ontario if the investment has been authorized by the Lieutenant Governor in Council.

Interpre-
tation

(4) For the purposes of this section,

(a) one company is associated with another if,

(i) one of the companies controls the other,

(ii) both of the companies are controlled by the same person or group of persons,

(iii) each of the companies is controlled by one person and the person who controls one of the companies is related to the person who con-

trols the other, and one of those persons owns directly or indirectly one or more shares of the capital stock of each of the companies,

(iv) one of the companies is controlled by one person and that person is related to each member of a group of persons that controls the other company, and one of those persons owns directly or indirectly one or more shares of the capital stock of each of the companies, or

(v) each of the companies is controlled by a related group and each of the members of one of the related groups is related to all of the members of the other related group, and one of the members of one of the related groups owns directly or indirectly one or more shares of the capital stock of each of the companies; and

(b) whether a person is related to another or whether a group of persons is a related group shall be determined in the same manner as set out in Part XVII of the *Income Tax Act* (Canada). R.S.O. 1970, c. 254, R.S.C. 1952, c. 148 s. 157 (2-4).

186.—(1) The Lieutenant Governor in Council may authorize the acceptance by a corporation of bonds, notes, stocks, debentures or other assets not fulfilling the requirements of this Act, Other
invest-
ments
authorized

(a) obtained in payment or part payment for securities sold by the corporation; or

(b) obtained under a *bona fide* arrangement for the reorganization of a company whose securities were previously owned by the corporation; or

(c) obtained under an amalgamation with another company of the company whose securities were previously owned by the corporation; or

(d) obtained for the *bona fide* purpose of protecting investments previously made by the corporation; or

(e) obtained by virtue of the purchase by the corporation of the assets of another corporation,

but the bonds, notes, stocks or debentures or other assets whose acceptance is so authorized shall be sold and disposed

of within five years after the acquisition thereof, or within such further time not exceeding one year as the Lieutenant Governor in Council, on report of the Minister, may fix and determine, unless it can be shown to the satisfaction of the Minister that the bonds, notes, stocks, debentures or other assets whose acceptance is so authorized are not inferior in status or value to the securities for which they have been substituted.

Stocks of
reorganized
companies

(2) For the purpose of determining the eligibility as investments under this Act of the preferred or common stocks of a company that has been voluntarily reorganized without the impairment of the status or value of its securities, dividends paid on the preferred and common stocks of the company before the reorganization may be counted as dividends paid on such stocks respectively of the reorganized company. R.S.O. 1970, c. 254, s. 158.

May hold
certain
estates and
interests in
land; and
may dispose
of same

187.—(1) A registered corporation may hold real estate which, having been mortgaged or hypothecated to it, has been acquired by it for the protection of its investment, and real estate conveyed to it in satisfaction of debts previously contracted in the course of its business, and may from time to time sell, mortgage, lease, exchange or otherwise dispose of such real estate, and may sell or otherwise dispose of, as it considers advisable, any mortgage or security that it has lawfully acquired. R.S.O. 1970, c. 254, s. 159 (1).

Powers and
rights of
grantors and
grantees

(2) The Corporation may give receipts, acquittances and discharges, either absolutely and wholly or partially, and may grant or take such deeds, assignments or other instruments as are necessary for carrying any such holding, purchase, exchange or resale into effect, and the grantee or assignee in any such instrument stands in the place of, and is entitled to, and has all the same rights, powers and remedies, and is subject to the same obligations and liabilities as the grantor or assignor would have been entitled to or would have been subject to if the grant or assignment had not been made. R.S.O. 1970, c. 254, s. 159 (3).

Power to
hold real
estate for
business

188.—(1) A registered corporation may hold to its own use and benefit such real estate as is necessary for the transaction of its business, or is acquired or held *bona fide* for building upon or improving for that purpose, and may sell, mortgage or dispose of such real estate.

Power to
hold real
estate on
relocation of
employee

(2) The corporation may acquire, hold, sell or dispose of real estate acquired in connection with the relocation by the corporation of the place of employment of an employee, if the

real estate serves as the residence of the employee immediately after the relocation or served as the residence of the employee immediately before the relocation but the real estate shall not be allowed as an asset of the corporation in the annual report prepared by the Registrar for the Minister if it is held for more than two years following its acquisition. R.S.O. 1970, c. 254, s. 160.

189. A registered corporation, when so authorized by its letters patent or by the Lieutenant Governor in Council, may acquire or may construct, on any lands held pursuant to section 188, a building larger than is required for the transaction of its business and may lease any part of the building not so required or, subject to the approval of the Lieutenant Governor in Council, may lease the whole building with a lease back to the corporation of the part of the building required by the corporation for the transaction of its business. R.S.O. 1970, c. 254, s. 161.

Power to acquire larger building and to lease part or lease whole with lease back

190. A provincial corporation shall not make or undertake any investment under section 188 or 189 that will cause the total amount at which such investments are carried on its books to exceed 35 per cent of its unimpaired capital, surplus and reserves. R.S.O. 1970, c. 254, s. 162; 1973, c. 128, s. 19.

Limit of amount of investments in buildings

191.—(1) A corporation shall not knowingly make an investment,

Prohibited investments

(a) by way of a loan to,

(i) a director or officer of the corporation or a spouse or child of such director or officer, or

(ii) an individual, his spouse or any of his children under twenty-one years of age if either the individual or a group consisting of the individual, his spouse and such children is a substantial shareholder of the corporation;

(b) in a company that is a substantial shareholder of the corporation; or

(c) in a company in which,

(i) an individual mentioned in subclause (a) (i),

(ii) an individual who is a substantial shareholder of the corporation,

(iii) another corporation that is a substantial shareholder of the corporation, or

(iv) a group consisting exclusively of individuals mentioned in subclause (a) (i),

has a significant interest.

Disposition

(2) The corporation shall not knowingly retain an investment mentioned in subsection (1). R.S.O. 1970, c. 254, s. 163 (1, 2).

Interpre-
tation

(3) For the purpose of this section,

significant
interest

(a) a person has a significant interest in a company, or a group of persons has a significant interest in a company, if,

(i) in the case of a person, he owns beneficially, either directly or indirectly, more than 10 per cent, or

(ii) in the case of a group of persons, they own beneficially, either individually or together and either directly or indirectly, more than 50 per cent,

of the shares of the company for the time being outstanding;

substantial
shareholder

(b) a person is a substantial shareholder of a corporation, or a group of persons is a substantial shareholder of a corporation, if that person or group of persons owns beneficially, either individually or together and either directly or indirectly, equity shares to which are attached more than 10 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding; and in computing the percentage of voting rights attached to equity shares owned by an underwriter, there shall be excluded the voting rights attached to equity shares acquired by him as an underwriter during the course of distribution to the public by him of such shares;

equity
share

(c) "equity share" means a share of any class to which are attached voting rights exercisable under all circumstances and a share of any class to which are attached voting rights by reason of the occurrence of any contingency that has occurred and is continuing;

(d) "investment" means,

investment

(i) an investment in a company by way of purchase of bonds, debentures, notes or other evidences of indebtedness thereof or shares thereof, or

(ii) a loan to a person or persons, but does not include an advance or loan, whether secured or unsecured, that is made by a corporation to a company and that is merely ancillary to the main business of the corporation;

(e) "officer" means the president, vice-president, general manager, secretary, assistant secretary, comptroller, treasurer and assistant treasurer of a corporation and any other person designated as an officer of the corporation by by-law or by resolution of the directors thereof. R.S.O. 1970, c. 254, s. 163 (3); 1973, c. 128, s. 20 (1).

(4) For the purposes of this section, where a person or a group of persons owns beneficially, directly or indirectly, shares of a company, that person or group of persons shall be deemed to own beneficially that proportion of the shares of any other company that is owned beneficially, directly or indirectly, by the first-mentioned company, that is equal to the proportion of the shares of the first-mentioned company that is owned beneficially, directly or indirectly, by that person or group of persons.

(5) Notwithstanding subsection (4), a corporation is not prohibited from making an investment in a company only because a person or a group of persons that owns beneficially, directly or indirectly, or is deemed to own beneficially, equity shares of the corporation is by reason thereof deemed to own beneficially equity shares of the company. R.S.O. 1970, c. 254, s. 163 (4, 5).

(6) Where any person or group of persons is a substantial shareholder of a corporation and, as a consequence thereof and of the application of this section, certain investments are prohibited for the corporation, the Minister may, on the advice of the Registrar, and on application by the corporation, exempt from such prohibition any particular investment or investments of any particular class if he is satisfied,

(a) that the decision of the corporation to make or hold any investment so exempted has not been and is not likely to be influenced in any significant way by that

person or group, and does not involve in any significant way the interests of that person or group apart from their interests as a shareholder of the corporation; and

- (b) that the investment is to be made under the power granted to the corporation by sections 134, 143, 144, 145, 178, 179, 180, 181, 182 and 183. R.S.O. 1970, c. 254, s. 163 (6); 1973, c. 128, s. 20 (2).

Idem

(7) Any exemption made by the Minister under subsection (6) may contain any conditions or limitations considered by the Minister to be appropriate and may be revoked by the Minister at any time. R.S.O. 1970, c. 254, s. 163 (7).

Exception

(8) Notwithstanding the provisions of this section, a corporation is not prohibited from making a *bona fide* mortgage loan on the security of a residence of one of its officers who is not a director, where the loan is authorized by the directors of the corporation. 1972, c. 101, s. 21.

Assets in
Canada

192.—(1) A provincial corporation shall at all times retain in Canada assets at least equal to its liabilities incurred in Canada and to the moneys for which it is accountable as a trustee in Canada.

Safekeeping

(2) The custody of securities registered in the name of or held by a provincial corporation is subject to such regulations respecting their safekeeping, including registration and the bonding of directors, officers and employees of the corporation, as the Lieutenant Governor in Council may prescribe. R.S.O. 1970, c. 254, s. 164.

Corporation
may be
required to
dispose of
unauthor-
ized
investments

193. The Registrar may request any corporation to dispose of and realize any of its investments that are not authorized by this Act, and it shall within sixty days after receiving the request dispose of and realize such investments, and if the amount realized therefrom falls below the amount paid by it for such investments, its directors are jointly and severally liable for the payment to it of the amount of the deficiency, but if any director present when any such investment is authorized, forthwith, or if any director then absent, within twenty-four hours after he becomes aware of such investment, and is able to do so, enters his written protest against such investment, and within eight days thereafter notifies the Registrar in writing of his protest, the director may thereby, but not otherwise, exonerate himself from liability. R.S.O. 1970, c. 254, s. 165.

RETURNS

194.—(1) Every trust company shall prepare a statement in the form prescribed by the Registrar as at the last day of June and of December in each year showing the changes in investments and loans of the company during the preceding half-year. Semi-annual
return

(2) Every trust company shall prepare a statement in the form prescribed by the Registrar as at the last day of March, June, September and December in each year showing the amount of cash and securities required to be maintained under section 121 and the amount of deposits and of funds received for guaranteed investment coming due in less than 100 days. Quarterly
statement

(3) The statements mentioned in subsections (1) and (2) shall be verified by a certificate of a responsible officer of the trust company and shall be filed with the Registrar within thirty-one days after the date as at which they are made up. R.S.O. 1970, c. 254, s. 166 (2-4). Verification
of
statements

195.—(1) Every loan corporation shall make a quarterly return in the form prescribed by the Registrar showing the amount of cash and securities required to be maintained under section 108 and the amount of deposits and of obligations of the corporation payable in less than 100 days as such amounts exist on the last days of March, June, September and December in each year, and the return shall be filed with the Registrar not later than one month after the expiration of the quarter to which it relates. Quarterly
return
by loan
corporations
as to
deposits

(2) Every loan corporation shall prepare a statement in the form prescribed by the Registrar as of the last day of June and of December in each year showing the changes in investments and loans of the corporation during the preceding half-year. Semi-annual
return

(3) The statements mentioned in subsections (1) and (2) shall be verified by a certificate of a responsible officer of the loan corporation and shall be filed with the Registrar within thirty-one days after the date as at which they are made up. R.S.O. 1970, c. 254, s. 167. Verification

196.—(1) The managing director, manager or secretary of each registered corporation shall prepare annually a statement in the form prescribed by the Registrar of the financial condition and affairs of the corporation for the Annual
statement

year ending on the 31st day of December or on any date within the two months preceding the 31st day of December, and the statement shall be filed with the Registrar within two months after the end of the year to which it relates.

Extra-provincial corporation

(2) In the case of an extra-provincial corporation, the Registrar may accept the statement required by subsection (1) as for the then last fiscal year of the corporation. R.S.O. 1970, c. 254, s. 168 (1, 2).

Report of auditor on annual statement

(3) The statement referred to in subsection (1) shall have attached the report of the auditor, which shall be in the form and content required by section 100. 1972, c. 101, s. 22 (1).

Affidavit of president, etc.

(4) Such annual statement shall also be proved by the affidavit of the president or vice-president and of the managing director, or some other principal officer of the corporation, and shall be accompanied by a certified copy of a resolution of the directors showing that such annual statement was adopted by them.

Extending time for filing of statement

(5) On sufficient cause shown and upon payment of the prescribed fee, the Registrar may by writing under his hand and seal of office, before or after the last day for filing the annual statement, extend the time for filing an annual statement.

Penalty for failure to file statement or supply information

(6) Any corporation that does not file its annual statement as required by this section, or make prompt and explicit answer to any inquiries then or at any time made by the Registrar touching its contracts, finances, stock, shares, securities, obligations, by-laws or books or, if required, produce for examination its books, records, securities, accounts and vouchers is liable to suspension, cancellation, or non-renewal of registry, and is liable to a penalty of \$50 for each day of default, but not exceeding in the whole \$1,000.

Extra-provincial corporations

(7) Where it is made to appear to the Registrar that an extra-provincial corporation does not borrow moneys in Ontario by the sale of its bonds, debentures or other securities or by accepting deposits or other moneys for investment and does not exercise in Ontario any of the powers of a trust company, other than the loaning of money in Ontario, the Registrar may direct that this section does not apply to the corporation, in which case it shall make such returns and give such information as the Registrar may require. R.S.O. 1970, c. 254, s. 168 (4-7).

(8) Every registered corporation shall file with the Registrar a certified copy of any financial statement furnished to its shareholders within thirty-one days after distribution of the statement to its shareholders. 1972, c. 101, s. 22 (2).

MISCELLANEOUS

197. Any amount, not exceeding \$300, standing to the credit of a depositor in a registered corporation is not, while in the hands of the corporation or while in course of transmission from the corporation, liable to demand, seizure or detention under legal process as against the depositor or his nominee, assignee or representative, or as against any person to whom the corporation is by sections 198 and 199 authorized to pay such amount. R.S.O. 1970, c. 254, s. 169.

198.—(1) A person who,

(a) has on deposit with a corporation a sum not exceeding \$600;

(b) is the holder of debentures or guaranteed investment certificates issued by a corporation for a sum not exceeding \$600; or

(c) has on deposit with a corporation a sum and holds debentures or guaranteed investment certificates issued by the corporation, the amounts of which in the aggregate do not exceed \$600,

may by a writing, signed by him and deposited with the corporation, nominate any person to receive the amount thereof at his death.

(2) Upon receiving an affidavit as to the death of a person who has made a nomination under subsection (1), the corporation may substitute on its books the name of the nominee in place of the name of such person or may forthwith pay to the nominee the amount due to such person. R.S.O. 1970, c. 254, s. 170, *revised*.

199. Where a depositor, debenture holder or holder of a guaranteed investment certificate as described in clause 198 (1) (a), (b) or (c) dies without making a nomination in accordance with that section, the deposit, debenture or guaranteed investment certificate may, without letters probate or letters of administration

Filing of
financial
statements

Exemption

Direction
as to
disposition
of deposits
or debentures
on death

Rights of
corporation

Where no
direction

being taken out, be paid or transferred to the person who appears to the corporation to be entitled (under the will of such depositor, debenture holder or holder of a guaranteed investment certificate or in the case of an intestacy under the law relating to devolution of property) to receive it, upon receiving an affidavit of the death and that the person claiming is so entitled. R.S.O. 1970, c. 254, s. 171, *revised*.

Payments
by mistake

200. Where the corporation, after the death of a depositor, debenture holder or holder of a guaranteed investment certificate, has paid or transferred the deposit, debenture or guaranteed investment certificate to the person who at the time appeared to be entitled thereto, the payment or transfer is valid and effectual with respect to any demand from any other person as the legatee or next of kin or as the lawful representative of the deceased against the corporation, but the legatee, next of kin or representative is entitled to recover the amount of the deposit, debenture or guaranteed investment certificate from the recipient or transferee. R.S.O. 1970, c. 254, s. 172.

Service of
notices

201. Delivery of any written notice or document to a corporation for any purpose of this Act, where the mode is not otherwise expressly provided, may be by letter delivered at its head or chief office in Ontario or its chief agency therein, or sent by registered mail addressed to it, its manager or agent at such head or chief office or agency, or by delivering the notice personally to an authorized agent of the corporation. R.S.O. 1970, c. 254, s. 173.

Winding up
R.S.O. 1980,
c. 95

202. Except where Part VI of the *Corporations Act* is inconsistent with this Act, that Part applies to the winding up of corporations to which this Act applies, substituting the word "Registrar" for the word "Minister". R.S.O. 1970, c. 254, s. 174.

OFFENCES AND PENALTIES

Refusal to
make entries
or exhibit
same, etc.

203. Every director, manager, auditor, officer, agent, collector, servant or employee of a corporation who refuses or neglects to make any proper entry in any book of record, entry or account of the corporation, or to exhibit the same, or to allow the same to be inspected or audited, either for the general purposes of the corporation or for the purposes of this Act, and extracts to be taken therefrom, is guilty of an offence. R.S.O. 1970, c. 254, s. 175.

False
statements

204.—(1) Every person who makes any wilfully false or deceptive statement in any account, statement, return, report or other document respecting the affairs of a cor-

poration is guilty of an offence and on conviction is liable to imprisonment for a term of not more than five years.

(2) Every president, vice-president, director, manager or ^{Officers' liability} other officer and every auditor of a corporation, who,

(a) prepared, signed, approved or concurred in any such account, statement, return, report or document containing such false or deceptive statement; or

(b) used the same with intent to deceive or mislead any person,

shall be held to have wilfully made such false or deceptive statement and, further, is responsible for all damages sustained by any person in consequence thereof. R.S.O. 1970, c. 254, s. 176.

205.—(1) For every contravention of this Act that is ^{General penalty} declared to be an offence and for which no other penalty is provided, the offender, on conviction, for the first offence, is liable to a fine of not more than \$2,000 and, for any subsequent offence of the same kind, is liable to imprisonment for a term of not less than three months and not more than twelve months or, in the case of an organization, society, association, company or corporation, to a fine of not more than \$25,000. R.S.O. 1970, c. 254, s. 177 (1); 1973, c. 128, s. 21.

(2) A proceeding under subsection (1) shall be commenced ^{Limitations of prosecutions} within one year after the commission of the offence. R.S.O. 1970, c. 254, s. 177 (2), *revised*.

(3) The fines under this Act belong to the Crown in right ^{Disposition of fines} of Ontario. R.S.O. 1970, c. 254, s. 177 (3).

FEES

206.—(1) The Lieutenant Governor in Council may make ^{Regulations} regulations,

(a) requiring the payment of fees for letters patent of incorporation and supplementary letters patent and in respect of any function performed by the Registrar under this Act and prescribing the amounts thereof;

- (b) prescribing the terms and conditions under which registered corporations may invest their funds in fully paid shares under sections 180 and 183;
- (c) respecting the records, papers and documents to be retained by corporations and the length of time they shall be so retained;
- (d) requiring the disclosure to borrowers of terms and conditions of loans, mortgages and interest rates in lending transactions and prescribing the form thereof. 1972, c. 101, s. 23, *part*; 1973, c. 128, s. 22.

Payment to
Registrar

- (2) The fees are payable to the Registrar.

Commuta-
tion on
proposed
discon-
tinuance of
business

- (3) Where a registered corporation proves to the satisfaction of the Registrar that it is discontinuing business in Ontario, and has given such public notice of intended discontinuance as is required, the fee for registry or renewal of registry, as the case may be, may, on the certificate of the Registrar, be commuted to one-fourth of the prescribed fee, but registry at such commuted fee shall not be granted for more than four years in all, unless for cause shown to the satisfaction of the Registrar, in which case registry may be granted year by year for an additional number of years.

Time of
payment

- (4) In the case of an application or other document or instrument to be filed, examined or deposited, the fee shall be paid before the application or other document or instrument is dealt with, and, in the case of registry or certificates of registry, the fee shall be paid before the corporation is registered. R.S.O. 1970, c. 254, s. 178 (3-5).

CHAPTER 250

Local Improvement Act

INTERPRETATION

1. In this Act,

Interpre-
tation

1. “Board” means the Ontario Municipal Board;
2. “bridge” includes a viaduct, culvert, subway and embankment, and a pavement on a bridge;
3. “clerk” means the clerk of the municipality and includes any officer or person authorized or required by the council to perform any duty that under this Act is to be or may be performed by the clerk;
4. “constructing” and “construction” include reconstructing and reconstruction, wholly or in part, when the lifetime of the work has expired;
5. “corporation” means the corporation of a municipality;
6. “corporation’s portion of the cost” means that part or proportion of the cost of a work that is not to be specially assessed, but is payable by the corporation;
7. “council” means the council of the corporation of a municipality;
8. “county” includes a district;
9. “court of revision” means a court of revision constituted under this Act;
10. “curbing” includes a curbing of any material in or along a street, whether constructed in connection with or apart from the laying down of a pavement or sidewalk, or with or without a projection for the purpose of a gutter;
11. “engineer” includes an officer or person authorized or required by the council to perform any duty that under this Act is to be or may be performed by an engineer;

12. "frontage", when used in reference to a lot abutting directly on a work, means that side or limit of the lot that abuts directly on the work;
13. "judge of the county court" means a judge of a county or district court;
14. "lifetime", as applied or applicable to a work, means the lifetime of the work as estimated by the engineer or, in case of an appeal, as finally determined by the court of revision or the judge, as the case may be;
15. "lot" means a subdivision or a parcel of land that by the *Assessment Act* is required to be separately assessed, and "lots" means more than one lot as so defined;
16. "municipality" includes a union of townships, a municipality composed of more than one township, a township, a city, a town and a village, but not a county;
17. "owner" and "owners" means respectively the person or persons appearing by the last revised assessment roll of the municipality to be the owner or owners of land, and, except in the case of a township, include a tenant for years, the unexpired term of whose tenancy including any renewal thereof to which he is entitled extends for not less than the period during which the special assessment for the work is to be made, if by the terms of his tenancy he would be liable for the payment of the special assessment for the work, but do not include a person who is, or is assessed as, owner where there is a tenant for years of the land who is an owner within the meaning of this paragraph;
18. "owners' portion of the cost" means that part or portion of the cost of a work that is to be specially assessed upon the land abutting directly on the work or upon land immediately benefited by the work;
19. "pavement" includes any description of pavement or roadway;
20. "paving" includes macadamizing, planking and the laying down or construction or any description of pavement or roadway and the construction of a curbing;

21. "published" means published in a daily or weekly newspaper which, in the opinion of the clerk, has such circulation within the municipality as to provide reasonable notice to those affected thereby, and "publication" has a corresponding meaning;
22. "sewer" includes a common sewer and a drain and two or more sewers connected as a system of sewers;
23. "sidewalk" includes a footway and a street crossing;
24. "specially assessed" means specially rated for or charged with part of the cost of a work;
25. "street" includes a lane, alley, park, square, public drive and public place, or a part of any of them;
26. "value" means the assessed value according to the last revised assessment roll of the municipality;
27. "watermain" includes two or more watermains connected in a system of waterworks and hydrants;
28. "work" means a work or service that may be undertaken as a local improvement;
29. "work undertaken" means a work that is undertaken as a local improvement. R.S.O. 1970, c. 255, s. 1; 1972, c. 47, s. 1.

WORKS THAT MAY BE UNDERTAKEN AS LOCAL
IMPROVEMENTS

2.—(1) A work of any of the characters or descriptions hereinafter mentioned may be undertaken by the council of a corporation as a local improvement, Works that may be undertaken as local improvements

- (a) opening, widening, extending, grading, altering the grade of, diverting or improving a street;
- (b) opening or establishing a new street;
- (c) constructing a bridge as part of a street;
- (d) constructing, enlarging or extending a sewer, including a sewer on each side or on one side only of a street;

- (e) constructing, enlarging or extending a watermain, including a main on each side or on one side only of a street;
- (f) paving a street;
- (g) constructing a curbing, gutter or sidewalk in, upon or along a street;
- (h) constructing or maintaining a boulevard where a part of a street has been set apart for the purposes of a boulevard;
- (i) sodding any part of and planting, maintaining and caring for trees, shrubs and plants upon and in a street;
- (j) the extension of a system of water, gas, light, heat or power works owned by the corporation, including all such works as may be necessary for supplying water, gas, light, including street lighting, heat or power, to the owners of land, for whose benefit the extension is provided;
- (k) in a township where works have been constructed and erected for the supply of electrical power to owners, for constructing and erecting in connection with such works such further works, plant, appliances and equipment as may be necessary for street lighting;
- (l) acquiring, establishing, laying out and improving a park or square not having a greater area than one hectare, or a public drive;
- (m) constructing retaining walls, dykes, breakwaters, groynes, cribs and other shore protection works along the banks of rivers, streams or creeks or along the shores of lakes;
- (n) constructing and erecting on any street or part of a street, equipment, plant and works for the purpose of supplying electric light or power, including standards and underground conduits and wires, to the extent to which the cost of the same exceeds the cost of the equipment, plant and works that would otherwise be provided at the expense of the corporation at large;
- (o) constructing a roadway or subway under a railway or other roadway;

(*p*) subject to section 25, for resurfacing with asphalt or other suitable material a pavement having a foundation that in the opinion of the engineer is sufficient therefor, whether or not the lifetime of the pavement has expired, and, when any work undertaken under this clause is such as might entitle it to a provincial grant, the approval of the Ministry of Transportation and Communications shall be first obtained with respect to the suitability of the foundation;

(*q*) widening a pavement on a street;

(*r*) constructing a retaining wall with or without a sidewalk or pavement on a street. R.S.O. 1970, c. 255, s. 2 (1); 1972, c. 1, s. 100 (2); 1978, c. 87, s. 39 (1).

(2) Nothing in this section extends or applies to a work of ordinary repair or maintenance. R.S.O. 1970, c. 255, s. 2 (2). Repair and maintenance

3.—(1) Where the work is the construction of a pavement or watermain, the council, before proceeding with the work, may construct all works necessary for surface drainage in connection therewith and may make all necessary private drain connections from the main sewer to the street line on either or both sides, and may also lay all necessary water service pipes and stop cocks and make all necessary alterations in the same, and, where gas works are owned by the corporation, the council may lay all necessary gas mains, service pipes and stop cocks and make all necessary alterations in the same, and, where the work is the construction of a sewer, the council may make all necessary private branch drains and connections to the street line on either or both sides; but the cost of a water or gas service or stop cock and any alteration of the same and the cost of a private branch drain and connection shall be specially assessed only upon the particular lot to serve which it was constructed or effected by an equal special rate per metre of the frontage of such lot. R.S.O. 1970, c. 255, s. 3 (1); 1978, c. 87, s. 39 (2). Works that may be undertaken in connection with a pavement, watermain or sewer

(2) Where the work is the construction of a pavement, the council may from time to time during the progress of the work, upon the written request of the owner of the lot to be served, provide for the construction, as part of the pavement, of an approach of such width and character as the council may determine from the boundary line of the pavement to the street line, so as to form an approach to a particular lot, and the cost of such approach shall be specially assessed upon the particular lot so served. Construction of approach to lot

To be part
of work of
construction

(3) The works mentioned in subsection (1) shall be deemed part of the work of construction of the pavement, sewer or watermain in all respects except as to the manner in which the cost of them is to be specially assessed as provided by that subsection.

How to be
assessed

(4) The amount to be assessed against each lot in respect of a private drain connection, water service pipe or gas service pipe shall be the cost thereof from the centre of the street to the street line, whether or not the sewer or water or gas main is laid in the centre of the street, but this subsection does not apply to private drain connections where a sewer is constructed on each side of a street. R.S.O. 1970, c. 255, s. 3 (2-4).

Construc-
tion of
private
drain
connections
without
petition

4.—(1) Where a sewer, watermain or gas main has been or is hereafter constructed, the council, by a vote of two-thirds of all the members thereof at any general or special meeting, may undertake the construction of private drain connections, water service pipes or gas service pipes from the sewer, watermain or gas main to the street line on either or both sides as a local improvement without any petition therefor, and the cost of each private drain connection, water service pipe or gas service pipe shall be specially assessed upon the particular lot for or in connection with which it is constructed by an equal special rate per metre of the frontage of the lot, and the owners of the land do not have the right of petition provided for by section 12, and the provisions of subsection 3 (4) apply. R.S.O. 1970, c. 255, s. 4 (1); 1978, c. 87, s. 39 (3).

At request
of owner

(2) Where a private drain connection, gas or water service pipe has been constructed by a municipality at the request of the owner of land and the council has not proceeded under subsection (1), the amount due may be inserted in the collector's roll and be collected in the same manner as taxes. R.S.O. 1970, c. 255, s. 4 (2).

Purchase by
township of
works
already
constructed

5. In a township, town or village in unorganized territory, where the owners of land have constructed a work that might have been undertaken as a local improvement, the council, upon the petition of three-fourths in number of the owners of the land to be immediately benefitted by the acquisition of the work, representing at least two-thirds of the value of such land, may acquire the work at a price agreed upon or to be determined by arbitration under the *Municipal Act*, and the purchase money may be provided by the council and may be assessed in like manner as if the work were a work that the council were undertaking as a local improvement, and all the provisions of this Act apply as if the council were undertaking the work so acquired as a local improvement. R.S.O. 1970, c. 255, s. 5.

R.S.O. 1980,
c. 302

6.—(1) Where the work is the opening, widening or extension of a street or the construction of a bridge, and the cost of the work as estimated by the engineer will exceed \$50,000, any person whose land is to be specially assessed may, within ten days after notice to him of the intention of the council to undertake the work, give notice that he objects to the work being undertaken upon the ground that it is a work for the general benefit of the municipality or of a section or district thereof, and, if such notice is given, the work shall not be undertaken without the approval of the Board.

Approval of Board required in the case of certain works

(2) If the Board, after notice to the corporation and to all persons interested and after hearing such of them as request to be heard, determines that for the reasons mentioned in subsection (1), or either of them, it is proper to do so, the Board may withhold its approval.

Approval may be withheld

(3) If the Board determines that the cost of the work should be borne by the corporation or by the owners of the land situate within a section or district of the municipality, the Board may make an order so declaring, and in that event the council may, notwithstanding the provisions of this Act or of any by-law passed under the authority of this Act, undertake and proceed with the work at the cost of the corporation or of the section or district thereof mentioned in the order, as the case may be.

Apportionment of cost of work

(4) The Board, instead of making an order under subsection (3), may direct that if the work is undertaken, such part of the cost of it as the Board may consider just shall be charged upon the lots abutting directly upon the work, in accordance with the provisions of this Act, and that the residue of it shall be borne by the corporation or partly by the corporation and partly by a section or district of the municipality in such proportions as the Board may direct, and, if the council undertakes the work, it shall conform with the directions of the order.

Cost may be charged upon lots abutting

(5) The special assessment upon the lots shall not be made by the Board, but by the council, in accordance with this Act. R.S.O. 1970, c. 255, s. 6.

Special assessments by council

PROCEDURE FOR UNDERTAKING WORK

7.—(1) A by-law may be passed for undertaking a work as a local improvement,

Methods of undertaking works

(a) on petition;

- (b) without petition, on the initiative of the council, hereinafter called the initiative plan, except in the case of a park or square or public drive mentioned in clause 2 (1) (l);
- (c) on sanitary grounds, as mentioned in section 9; or
- (d) without petition in the cases mentioned in sections 4 and 8.

One by-law
may include
several
works

(2) Instead of passing separate by-laws for each work, the council may pass one by-law in respect of several works. R.S.O. 1970, c. 255, s. 7.

Local im-
provements
with
approval
of Board

8.—(1) Where the council determines and, by by-law or resolution passed at any meeting by a vote of two-thirds of all the members thereof, declares it is desirable that the construction of a curbing, pavement, sidewalk, sewer, water-main or bridge, or the opening, widening, extending, grading, altering the grade of, diverting or improving a street, or the widening of a pavement, or the extension of a system of water works, or of private drain connections or water service pipes under section 4, should be undertaken as a local improvement, the council may, with the approval of the Board, pass a by-law to undertake the work.

Petition not
requisite

(2) Where the undertaking of the work is approved by the Board, no petition required by section 11 is necessary and the owners do not have the right of petition provided by section 12.

Notice of
application
to Board

(3) Where it is intended to proceed under this section, the council shall not be deemed to proceed on the initiative plan but there shall be published at least once a week for two weeks a notice of intention in Form 2 to apply to the Board for approval of the work being undertaken and any owner may within twenty-one days after the first publication of such notice file with the clerk his objection to the work being undertaken.

Mailing of
notice

(4) Instead of publishing a notice as provided in subsection (3), the notice in Form 2 may be sent by prepaid mail to every owner appearing by the last revised assessment roll to be the owner of property that will abut on the work and by publication at least once of the notice in Form 2, and any owner may, within twenty-one days after the publication or mailing of the notice, whichever is the later, file with the clerk his objection to the work being undertaken.

(5) The Board may direct such further or other notice or notices in Form 2 or otherwise, to be given by the council, and the Board may make such order with respect to the work as may seem proper.

Further notices

(6) The work shall not be undertaken until the approval of the Board to the passing of the by-law therefor has been obtained.

Work not to proceed until approval given

(7) The notice in Form 2 when published may relate to and include any number of different works.

What notice may include

(8) The passing of a by-law to authorize the undertaking of a work under subsection (1) shall not be deemed to be in contravention of subsection (1) if such by-law contains a provision that the by-law shall not take effect until approved by the Board. R.S.O. 1970, c. 255, s. 8.

By-law not to be in contravention of subs. (1)

9. Where the council, upon the recommendation of the Minister of Health or of the local board of health of the municipality, determines and, by by-law passed at a regular or special meeting of the council by vote of two-thirds of all the members thereof, declares that the construction, enlargement or extension of a sewer or watermain or of private drain connections or water service pipes under section 4 as a local improvement is necessary or desirable in the public interest on sanitary grounds, the council may undertake the work without petition, and the owners of the land do not have the right of petition provided for by section 12. R.S.O. 1970, c. 255, s. 9.

Construction of sewer on recommendation of health authority

10.—(1) Where it is intended to proceed under section 9, the council shall not be deemed to proceed on the initiative plan, but, before passing the by-law for undertaking the work, shall cause notice of its intention in Form 1 to be published, and such notice may relate to and include any number of different works.

Notice of intention

(2) Where the council proceeds with any local improvement under subsection (1), a majority of the owners representing at least one-half the value of the lots that are to be specially assessed therefor, being dissatisfied with the local improvement or with the manner in which it has been undertaken, may apply by petition to the Board for relief, and the Board may thereupon investigate the complaint and make such order with respect to the local improvement as may seem proper, and, after notice to the clerk of the municipality of the application and pending its determination by the Board, the council shall not proceed with the local improvement work.

Objection to construction

**Sufficiency
of petition**

(3) The sufficiency of the petition shall be determined in the manner provided by section 15.

**Filing of
petition**

(4) The petition shall be deposited with the secretary of the Board within twenty-one days after the publication of notice of the council's intention to undertake the work.

**Time for
passing
by-law**

(5) The by-law for undertaking the work shall not be passed until the expiry of such twenty-one days. R.S.O. 1970, c. 255, s. 10.

**Number of
signatures
to petition
required**

11. The petition for a work shall be signed by at least two-thirds in number of the owners representing at least one-half of the value of the lots liable to be specially assessed, provided that, where a petition proposes that any lot be totally exempted from special assessment under section 30, such lot and the owner thereof shall be excluded from computation in ascertaining whether the petition is sufficiently signed. R.S.O. 1970, c. 255, s. 11.

**Notice of
intention
under
initiative
plan**

12.—(1) Where the council proceeds on the initiative plan, notice of the intention of the council to undertake the work in Form 3 shall be given by publication of the notice and by service of it upon the owners of the lots liable to be specially assessed, and, unless within one month after the first publication of the notice a majority of the owners, representing at least one-half of the value of the lots that are liable to be specially assessed, petition the council not to proceed with it, the work may be undertaken as a local improvement.

**Contents
of notice**

(2) The notice is sufficient if it designates by a general description the work to be undertaken and the street or place whereon or wherein, and the points between which, the work is to be done, and the number of the instalments by which the special assessment is to be payable.

**May cover
different
works**

(3) The notice may relate to and include any number of different works.

**Manner of
service**

(4) The notice may be served upon the owner,

(a) personally; or

(b) by leaving it at his place of business or of residence, if within the municipality; or

(c) by mailing it addressed to the owner at his actual place of business or of residence, if known, or at his place of business or residence as set forth in the last revised assessment roll of the municipality; or

(d) if the place of business and of residence of the owner are not known, by leaving it with a grown-up person on the lot of the owner that is liable to be specially assessed, if there is a grown-up person residing thereon.

(5) If the place of business and of residence of the owner are unknown, and there is no grown-up person residing on the lot of the owner that is liable to be specially assessed, service upon the owner is not requisite. Where residence, etc., unknown

(6) Publication and service of the notice may be proved by affidavit or statutory declaration which, before the passing of the by-law by which the special assessment is made to defray the cost of the work, is *prima facie* evidence and, after the passing of the by-law is conclusive evidence of the matters set forth therein. R.S.O. 1970, c. 255, s. 12. Proof of publication and service

13.—(1) Where the council has proceeded on the initiative plan and has been prevented from undertaking a work by reason of a petition having been presented under section 12, the council shall not proceed on the initiative plan with regard to the same work for a period of two years after the presentation of the petition; provided that, in a municipality in which a by-law passed under section 70 is in force, the prohibition contained in this section does not prevent the council from again proceeding on the initiative plan with regard to such work if it is of a different kind or description from or less expensive than that originally proposed to be undertaken. Effect of petition against work

(2) Nothing in this section prevents the council from exercising the power conferred by section 8. R.S.O. 1970, c. 255, s. 13. Powers conferred by section 8 not affected

14. There shall be set out opposite to every signature to the petition for or against a work a description of the lot of which the petitioner is the owner by its number or such other description as will enable the clerk to identify it. R.S.O. 1970, c. 255, s. 14. Lot of petitioner to be described

15.—(1) The sufficiency of a petition for or against a work shall be determined by the clerk, and his determination shall be evidenced by his certificate and when so evidenced is final and conclusive. Clerk to determine sufficiency of petition

(2) Where the sufficiency of a petition has been determined by the clerk, it shall be deemed to have been and to be a sufficient petition notwithstanding that changes may be made by the court of revision or by the judge in the lots to be specially assessed that have the effect of increasing or reducing the number of the lots. What owners to be counted

Determining
value of
lots

(3) When it is necessary to determine the value of any lot and the value cannot be ascertained from the proper assessment roll by reason of the lot not having been separately assessed, or for any other reason, the clerk shall fix and determine the value of the lot and the value thereof as so fixed and determined shall be deemed for the purpose of this Act to be the assessed value thereof, and his determination is final and conclusive.

Owner
whose name
is not on
roll may
petition

(4) Where a person who is, but does not appear by the last revised assessment roll of the municipality to be, the owner of land is a petitioner, he shall be deemed an owner if his ownership is proved to the satisfaction of the clerk, and, if the person who appears by the assessment roll to be the owner is a petitioner, his name shall be disregarded in determining the sufficiency of the petition.

Case of
joint
owners

(5) Where two or more persons are jointly assessed for a lot, in determining the sufficiency of a petition,

(a) they shall be reckoned as one owner only;

(b) they shall not be entitled to petition unless a majority of them concur and the signatures of any of them, unless the petition is signed by the majority, shall be disregarded in determining the sufficiency of the petition.

Witnesses

(6) The clerk, for the purpose of any inquiry pending before him under this section, may cause witnesses to be summoned and to be examined upon oath, and any person interested in the inquiry may, for the purpose of procuring the attendance of a witness, cause a subpoena to be issued out of the county court of the county in which the municipality lies.

Witness
fees

(7) A witness, if a resident of the municipality, is bound to attend without payment of any fees or conduct money and, if not a resident of the municipality, is entitled to fees and conduct money according to the county court scale.

Complaints
to be
investigated
by county
judge

(8) Where any person complains to the clerk that his signature to the petition was obtained by fraud, misrepresentation or duress, the complaint shall be investigated and determined by a judge of the county court, and the clerk shall delay certifying until he has received the finding or report of the judge upon the complaint, and in determining as to the sufficiency of the petition the clerk shall give effect to such finding or report. R.S.O. 1970, c. 255, s. 15.

16. A petition for or against the undertaking of a work shall be lodged with the clerk and shall be deemed to be presented to the council when it is so lodged. R.S.O. 1970, c. 255, s. 16. Petitions to be lodged with clerk

17. No person has the right to withdraw his name from, and no name shall be added to, a petition after the clerk has certified as to its sufficiency. R.S.O. 1970, c. 255, s. 17. Withdrawal of name from petition

18. Where a by-law has been heretofore or is hereafter passed for undertaking any work as a local improvement and the council deems it inadvisable or impracticable to complete the work, the council may, by by-law, amend such by-law and provide for the carrying out of part only of the work mentioned therein or for the substitution in whole or in part of another kind or character of work of the same class as that undertaken in such by-law, but all the provisions of this Act apply to such partial work as if it had been originally undertaken as one entire work or to such substituted work as if it had been the work originally undertaken, but the amending by-law takes effect only on being approved by the Board. R.S.O. 1970, c. 255, s. 18. Power to undertake part of work only

19. After passing a by-law for establishing, extending, widening or diverting a highway, and before completion of the work, the council may apply to the Board for leave to pass an amending by-law providing for a deviation in the course or location of the highway as defined in the original by-law, and the Board may make an order approving of and validating an amending by-law accordingly on such terms and conditions and after such hearing as it may consider proper, and subject to the terms of the order the provisions of this Act apply to such altered work as if it had been provided for in the original by-law. R.S.O. 1970, c. 255, s. 19. Amendments to by-laws respecting highways

HOW COST OF WORK TO BE BORNE

20.—(1) Except as otherwise expressly provided in this Act, the entire cost of a work undertaken shall be specially assessed upon the lots abutting directly on the work, according to the extent of their respective frontages thereon, by an equal special rate per metre of such frontage sufficient to defray such cost. R.S.O. 1970, c. 255, s. 20 (1); 1978, c. 87, s. 39 (4). Frontage rate

(2) The following may be included in the cost of the work, Items that may be included in cost

(a) engineering expenses;

(b) cost of advertising and service of notices;

- (c) interest on temporary loans;
- (d) compensation for lands taken for the purposes of the work or injuriously affected by it and the expenses incurred by the corporation in connection with determining such compensation;
- (e) the estimated cost of the issue and sale of debentures and any discount allowed to the purchasers of them.

Case of
widening
pavement

(3) Where the work is the widening of a pavement on a street, the lots on each side of the street shall be deemed to abut directly on the work. R.S.O. 1970, c. 255, s. 20 (2, 3).

Construc-
tion of sewer
or water-
main

(4) Where the work is the constructing, enlarging or extending of a sewer or watermain, including a sewer or watermain on each side or one side only of a street, the council may make a reduction in the special assessment of corner lots that would otherwise be chargeable thereon by deducting from the total frontage of a corner lot liable to special assessment the number of metres abutting on the work on the side of the lot or such part thereof as the council may determine. R.S.O. 1970, c. 255, s. 20 (4); 1978, c. 87, s. 39 (4).

Deduction
of contribu-
tions from
cost

21.—(1) Where a municipality receives a contribution in cash to be applied towards the cost of any work, the amount of the contribution shall be deducted from the total cost of the work and the balance shall for all purposes be deemed the actual cost of the work.

Contribu-
tion by way
of annuity,
how treated

(2) If the contribution is by way of an annuity, it shall be capitalized and the capitalized value shall be deducted as aforesaid, but the municipality shall nevertheless borrow the full amount of the cost of the work and shall specially assess against the owners of lots their share of the cost ascertained after making the deduction as aforesaid, and the balance of the total cost shall be the corporation's portion of the cost, and the annuity shall be applied in reduction of the annual rate levied to meet the corporation's portion of the cost.

Contribu-
tions for
excess cost
of work

(3) Notwithstanding subsections (1) and (2), where a contribution is to be applied towards any excess cost of a work caused by reason of the work being constructed with a greater capacity than is required for the purposes of the lots abutting on the work, the amount of the contribution shall be applied to reduce the corporation's portion of the cost. R.S.O. 1970, c. 255, s. 21.

22.—(1) Where a contractor is employed to construct a pavement or sidewalk, and the council has required him to guarantee that he will so construct it that it shall, for a period not exceeding ten years, remain in good condition and suitable for safe and comfortable travel and that he will, when required, make good any imperfections therein due to materials, workmanship or construction, in ascertaining the cost of the work no deduction shall be made from the sum paid to the contractor by reason of such guarantee having been required.

Guarantee
of work

(2) In all municipalities, where such guarantee is required, where any local improvement is undertaken by the corporation and constructed by day labour, the corporation may assess as part of the cost thereof a reasonable allowance to make good any imperfection therein due to materials, workmanship or construction during the lifetime thereof as fixed by the court of revision, the amount of such allowance to be subject to revision by the court of revision. R.S.O. 1970, c. 255, s. 22.

Assessment
of allowance
to make
good imper-
fections

23. There shall be included in the corporation's portion of the cost,

Corpora-
tion's
portion of
cost

- (a) at least one-third of the cost of a sewer having a sectional area of more than 0.38 square metres; and
- (b) the entire cost of all hydrants constructed in connection with a watermain and the entire cost of all culverts, catch basins and other works that are provided for surface drainage and that are incidental to the construction of the sewer or pavement; and
- (c) so much of the cost of a work as is incurred at street intersections. R.S.O. 1970, c. 255, s. 23; 1978, c. 87, s. 39 (5).

24.—(1) Where the work is the construction of a sewer or watermain, the council may in the by-law for undertaking the work, passed by a vote of three-fourths of all the members, provide that a certain sum per metre frontage shall be specially assessed upon the land abutting directly on the work and that the remainder of the cost of such sewer or watermain shall be borne by the corporation. R.S.O. 1970, c. 255, s. 24 (1); 1978, c. 87, s. 39 (6).

Apportion-
ment of cost
of sewers

(2) The part of the cost to be borne by the corporation shall not be less than that which, under section 23, is to be included in the corporation's portion of the cost. R.S.O. 1970, c. 255, s. 24 (2).

Part to be
borne by
corporation

Assumption
by corpora-
tion of
special
assessments
in certain
cases

25. Where the work undertaken is the resurfacing of a pavement as provided by clause 2 (1) (*p*), the corporation shall assume and pay the special assessments therefor charged against the lots fronting or abutting on the work until the expiration of the period within which such lots are specially assessed for the then existing pavement. R.S.O. 1970, c. 255, s. 25.

Widening
costs in
certain
cases

26. Where the work to be undertaken is the widening of a pavement on a street without a petition, the by-law for undertaking the work shall provide that, in addition to the corporation's portion of the cost including the portions otherwise provided for in this Act, there shall also be included in such portion so much of the cost of the work as is incurred in the construction or reconstruction of the pavement to a width greater than the width of the pavement then existing on the street. R.S.O. 1970, c. 255, s. 26.

Corpora-
tion may
assume part
of cost of
sidewalk or
pavement

27.—(1) Subject to subsection (3), the council of the corporation of a municipality in which there is not in force a by-law passed under section 70 applicable to the work may, by by-law passed at any general or special meeting by a vote of three-fourths of all the members of the council, provide that such part as to the council seems proper of the cost of every granolithic, stone, cement, asphalt or brick sidewalk, or of every pavement or curbing or of works, plant, appliances and equipment for street lighting constructed as a local improvement that otherwise would be chargeable upon the land abutting directly on the work, shall be paid by the corporation.

Repeal of
by-law

(2) Such by-law shall not be repealed except by a vote of three-fourths of all the members of the council.

Assumption
of larger
share of
certain
named work

(3) The council, by by-law passed at any general or special meeting by a vote of three-fourths of all the members of the council and approved by the Board, may provide that the corporation shall assume a larger share of the cost of a certain named work undertaken on a certain named street than is provided in the by-law passed under subsection (1), with reference to works of the same class, or, where no by-law has been passed under subsection (1), that the corporation shall assume a stated part of the owners' portion of the cost of any certain named work of any one of the classes set out in subsection (1). R.S.O. 1970, c. 255, s. 27.

Special
assessment
of corner
and
irregularly-
shaped lots

28.—(1) A reduction in the case of corner lots at the junction or intersection of streets and a reduction or increase in the case of triangular or irregularly-shaped lots shall be made in the special assessment, that otherwise would

be chargeable thereon, sufficient, having regard to the situation, value and superficial area of such lots as compared with the other lots, to adjust the assessment on a fair and equitable basis.

(2) Where a lot is for any reason wholly or in part unfit for building purposes, a reduction shall also be made in the special assessment that otherwise would be chargeable thereon sufficient to adjust its assessment as compared with that of the lots fit for building purposes on a fair and equitable basis.

(3) Subject to section 30, where a lot, other than a corner lot, has two limits that abut on works and the size or nature of the lot is such that any or all of the works are not required, a reduction in respect of the works that are not required, so long as they are not required, shall also be made in the special assessment that would otherwise be chargeable thereon, sufficient to adjust its assessment on a fair and equitable basis.

(4) The reduction shall be made by deducting from the total frontage of the lot liable to the special assessment so much thereof as is sufficient to make the proper reduction, but the whole of the lot shall be charged with the special assessment as so reduced.

(5) The amount of any reduction made in the assessment of any lot under the provisions of this section is not chargeable upon the lots liable to be specially assessed, but shall be paid by the corporation. R.S.O. 1970, c. 255, s. 28.

29.—(1) Where a local improvement is carried out and an exemption is made of flankage of a lot which flankage later becomes a frontage on the work that has been carried out, the corporation may impose a special assessment of such amount as would have been assessed against such flankage had it been frontage at the time of the passing of the by-law.

(2) Notice of such assessment shall be given by registered mail addressed to the then registered owner of such flankage.

(3) Any person complaining that the amount of flankage in respect of which the assessment is imposed is incorrect may do so in writing delivered to the clerk of the municipality within ten days of the mailing of the notice under subsection (2), and the clerk of the municipality shall forthwith transmit the same to the court of revision and give to

the complainant written notice of the time and place of the hearing of the complaint posted six days prior to the date set therefor, and the court of revision shall consider the complaint and its decision thereon is final and binding.

When due
and payable

(4) Where such assessment is so imposed, it is due and payable in equal annual instalments commencing the year when the flankage becomes the frontage on the work, and for such term of years as charges were imposed by the by-law.

Period in
which
charges
payable

(5) The annual assessments imposed or collected under this section shall be limited to those that would fall due during the period of the currency of the debentures issued for such work and five years thereafter and, when collected, shall be credited to the general funds of the corporation. R.S.O. 1970, c. 255, s. 29.

Assessment
for opening
lane

30.—(1) Where the work is the opening, widening, extension, grading or paving of a lane or the construction of a sewer for drainage purposes in a lane, and the council is of opinion that any lot abutting on the work is not benefitted by the work, or is not benefitted thereby to the same extent as other abutting lots, the council may, in the by-law for undertaking the work, exempt such lot or make a reduction in the special assessment that would otherwise be chargeable thereon by deducting from the total frontage of the lot liable to special assessment so much thereof as is sufficient to make the proper reduction.

Assessment
of cost of
work in
such case

(2) Where such lot is exempted, the amount of the special assessment that would otherwise be chargeable thereon shall be specially assessed against all the other abutting lots and, where a reduction is made, the entire cost of the work shall be specially assessed as if it were the cost with respect to the reduced frontage, but the whole of the lot granted the reduction shall be charged with the special assessment as so reduced.

Board's
approval

(3) None of the works mentioned in subsection (1) shall be proceeded with until the by-law for undertaking the work is approved by the Board. R.S.O. 1970, c. 255, s. 30.

Assessment
of cost of
certain
works

31.—(1) Subject to subsection (2), where the work undertaken is a sidewalk or curbing or a sewer or watermain constructed on one side of a street to serve only the lots on that side, only the land abutting on that side of the street upon which the work is constructed shall be specially assessed.

(2) On petition, sufficiently signed, of the owners on both sides of a street praying that a sidewalk be constructed on one side only of the street and that a certain portion not exceeding one-third of the owners' share of the cost be assessed on the lots fronting or abutting on the other side of the street, the council may specially assess the lands on the other side of the street in conformity with the petition and, if a sidewalk is thereafter constructed on the other side of the street, the owners' portion of the cost shall be specially assessed in like manner. R.S.O. 1970, c. 255, s. 31.

Assessment
of cost of
sidewalks
on petition

32.—(1) Where the work is the acquisition, establishment, laying out and improving of a park or square or the construction of a bridge or the construction of a sewer or watermain of a larger capacity than is required for the purpose of the abutting land, or the opening, widening, extending, grading, altering the grade of, diverting or improving a street or the construction of any work mentioned in clause 2 (1) (*m*) or (*r*), and the council is of opinion that for any reason it would be inequitable to charge the cost of the work on the land abutting directly thereon, the council may, in the by-law for undertaking the work passed by a vote of three-fourths of all the members, provide for the payment by the corporation of such part of the cost as to the council may seem just, and so much of the residue thereof as may seem just may be specially assessed upon the land abutting directly on the work, and so much of such residue as may seem just on such other land as is immediately benefitted by the work.

Apportion-
ment of
cost of a
bridge,
the opening
of a street,
etc.

(2) In the cases provided for by subsection (1), that part of the cost of the work for which the abutting land is to be specially assessed shall be assessed thereon in the manner provided by section 20, and that part of the cost for which land not abutting directly on the work is to be specially assessed shall be assessed thereon in the manner provided by sections 37 and 38. R.S.O. 1970, c. 255, s. 32.

Method of
assessment

33. Where the land abutting directly on any work undertaken as a local improvement is a right of way for a railway or for the transmission of electrical power, the council may exercise the powers conferred by subsection 32 (1) with respect to that part of the cost that would otherwise be specially assessed against such right of way. R.S.O. 1970, c. 255, s. 33.

Assessment
of right of
way of
railway, etc.

34. Where the work is the construction of a sewer and it is necessary to construct an outlet for the sewage, and the lands fronting or abutting on or through which the outlet is constructed are not benefitted or served thereby, the cost of the outlet shall be deemed to be a part of the cost of the

Assessment
of cost of
outlet for
sewage

sewer and shall not be specially assessed against the lands fronting or abutting on the outlet or through which the outlet is constructed. R.S.O. 1970, c. 255, s. 34.

Assessment
of cost of
outlet or
pumping
works

35. Where the work is the construction of a sewer that is an outlet for sewage from lands not abutting directly upon the work or is the installation and construction of sewage pumping works, force mains, siphons and other pumping facilities necessary for a sewer or sewer system in carrying away sewage from lands not abutting directly upon the works, the council may, in the by-law for undertaking the work passed by a vote of three-fourths of all the members, provide for the payment by the corporation of such part of the cost of the work as to the council may seem just, and that the residue thereof shall be specially assessed on the lands not abutting on the work but immediately benefitted thereby in the manner provided by sections 37 and 38. R.S.O. 1970, c. 255, s. 35.

Compensa-
tion by
reducing
assessment

36.—(1) Where the work of acquiring, establishing, opening, widening, extending or diverting a street involves the taking of a portion of a lot abutting on the work, or of one or more of a number of lots or contiguous lots owned by the same person, the council may agree with the owner that, in consideration of the dedication or gift of the land required to be taken or a release of or reduction in the owner's claim for compensation, the remainder of his lot or his remaining lots, as the case may be, shall be charged with no part or a specified portion or proportion only of the special assessment that would otherwise be chargeable thereon in respect of the cost of the work, and the special assessment roll shall be prepared in conformity with such agreement notwithstanding anything to the contrary in this Act.

Appeal

(2) An appeal lies to the court of revision and to a county judge from the action of the council in like manner as an appeal lies under the provisions of this Act with regard to the cost of a work undertaken. R.S.O. 1970, c. 255, s. 36.

Assessment
of non-
abutting
land equally
benefitted

37. Where land not abutting directly upon a work is to be specially assessed, if the whole of it is equally benefitted, the portion of the cost to be borne by such land shall be specially assessed upon the lots according to the extent of their frontage by an equal special rate per metre of such frontage. R.S.O. 1970, c. 255, s. 37; 1978, c. 87, s. 39 (7).

Assessment
of non-
abutting
land unequally
benefitted

38. Where land not abutting directly upon a work is to be specially assessed, and the whole of it is not equally benefitted, such land shall be divided into as many districts or sections as there are different proportions of benefit so that a

district or section shall embrace all the land that will be benefitted in the same proportion, and its proper proportion of the cost shall be assigned to each district or section, and the portion of the cost to be borne by each district or section shall be specially assessed on the lots therein according to the extent of their frontage by an equal special rate per metre of such frontage. R.S.O. 1970, c. 255, s. 38; 1978, c. 87, s. 39 (8).

39.—(1) Where a by-law has been passed providing for the undertaking of a work and lands that are assessed in one block and are or are to be specially assessed become subdivided, the council of the corporation with the approval of the Board may,

Special assessment of land assessed in block that becomes subdivided

- (a) amend the by-law for undertaking the work to define such lands so assessed in one block as an area; and
- (b) provide that the special assessments that would have been assessed against such lands, including all or part of any assessments that would otherwise become part of the corporation's share by reason of any new street provided for in such subdivision,
 - (i) shall be assessed and levied on the rateable property in the area, or
 - (ii) shall be assessed and levied in whole or in part upon the new lots fronting or abutting on the work and that the balance, if any, shall be assessed and levied on the rateable property in the area.

(2) Where a by-law is amended under subsection (1), the special assessment roll with respect to such area shall be amended by entering in accordance with section 41 every lot in the area to be specially assessed under this section.

Amendment of special assessment roll

(3) Section 44 applies with necessary modifications to the special assessments made under this section. R.S.O. 1970, c. 255, s. 39.

Holding court of revision

PROCEDURE FOR MAKING SPECIAL ASSESSMENT

40.—(1) Where the owners' portion of the cost is to be specially assessed upon the lots abutting directly on the work by an equal special rate per metre frontage, before passing the by-law for undertaking it, the council shall cause to be made,

Where all of owners' portion assessed on abutting land

- (a) a report as to the lifetime of the work;

- (b) a report as to the reductions, if any, which ought to be made under section 28 in respect of any lot and the aggregate amount of such reductions;
- (c) an estimate of the cost of the work;
- (d) a statement of the share or proportion of the cost that should be borne by the land abutting directly on the work and by the corporation respectively;
- (e) a report as to the number of instalments by which the special assessment should be made payable. R.S.O. 1970, c. 255, s. 40 (1); 1978, c. 87, s. 39 (9).

Non-
abutting
land

(2) In the case of a work, part of the owners' portion of the cost of which may be specially assessed on land not abutting directly on the work, before passing the by-law for undertaking the work, in addition to procuring the reports and estimate mentioned in subsection (1), the council shall cause a further report to be made, stating,

- (a) whether it would be inequitable to charge the whole of the owners' portion of the cost on the land abutting directly on the work; and
- (b) if inequitable to do so, what portion of the cost should be borne by the corporation, what portion thereof should be specially assessed upon the land abutting directly on the work and what land not abutting directly on the work will be immediately benefitted and should be specially assessed for any part of the cost and the portion of the cost which should be specially assessed upon it.

Lifetime of
work of
widening
pavement

(3) Where the work is the widening of a pavement that has been constructed as a local improvement and the lifetime of which has not expired, the unexpired portion of the lifetime of the pavement so constructed shall be the lifetime of the work. R.S.O. 1970, c. 255, s. 40 (2, 3).

Special
assessment
roll

41. Before a special assessment is imposed, the council shall cause a special assessment roll to be made, in which shall be entered,

- (a) every lot to be specially assessed in respect of the owners' portion of the cost, the name of the owner and the number of metres of its frontage to be so assessed;
- (b) every lot that, but for section 63, would be exempt from the special assessment and the number of metres of its frontage;

(c) the rate per metre with which each lot is to be so assessed;

(d) the number of instalments by which the special assessment is to be payable. R.S.O. 1970, c. 255, s. 41; 1978, c. 87, s. 39 (10).

42. The council may provide for the making of the reports, ^{How reports, statements, etc., to be made} statements, estimates and special assessment roll mentioned in sections 40 and 41 in such manner and by such officer of the corporation or person as the council may consider proper, and may do so by a general by-law applicable to all works or to any class or classes of them or by a by-law applicable to the particular work. R.S.O. 1970, c. 255, s. 42.

43.—(1) The court of revision shall consist of three or ^{Court of revision} five members appointed by the council of the municipality and such members other than members of the council may be paid such remuneration and expenses as the council may by by-law provide.

(2) Every such member shall be a person eligible to be ^{Qualifica-} elected a member of the council or shall be a member of the council. R.S.O. 1970, c. 255, s. 43.

(3) A majority of the members of the court of revision shall ^{Quorum} constitute and, notwithstanding the decision of any court, shall be deemed always to have constituted a quorum.

(4) A quorum of the court of revision is sufficient and, notwithstanding the decision of any court, shall be deemed always to ^{Jurisdiction and powers of quorum} have been sufficient to exercise all of the jurisdiction and powers of the court of revision. 1979, c. 84, s. 1.

44.—(1) Before a special assessment is imposed, a sittings ^{Holding of court of revision} of the court of revision for the hearing of complaints against the proposed special assessment shall be held.

(2) Ten days notice of the time and place of the sittings ^{Time and place} shall be given by publication, and at least fifteen days before the day appointed for the sittings a notice in Form 4 shall be mailed to the owner of every lot that is to be specially assessed. R.S.O. 1970, c. 255, s. 44.

45. The special assessment roll shall be kept open for ^{Roll to be kept open for 10 days} inspection at the office of the clerk for at least ten days next before the day appointed for the sittings of the court of revision. R.S.O. 1970, c. 255, s. 45.

Statement
of cost of
work for
court of
revision

46. A statement showing under appropriate heads the actual cost of the work, verified by the certificate of the clerk, assessment commissioner, treasurer or deputy or assistant treasurer of the municipality, shall be delivered to the chairman of the court of revision before the meeting of the court. R.S.O. 1970, c. 255, s. 46.

Estimate of
cost of
unfinished
work and
unsettled
claims

47.—(1) In ascertaining the actual cost of the work under section 46 where, in the opinion of the engineer and assessment commissioner or treasurer, the cost of any unfinished portion of the work and any unsettled claims for lands taken for or injuriously affected by the work will not exceed in amount 25 per cent of the total estimated cost of the work, the engineer and assessment commissioner or treasurer may estimate the cost of such unfinished work, and the amount of all such claims, and the amount may be included in the actual cost to be ascertained and certified under section 46, and shall be deemed to be the correct amount thereof subject to any order made with reference thereto by the court of revision.

Where
estimate
deficient

(2) If the cost of such unfinished work and unsettled claims exceeds the amount so estimated by the engineer and assessment commissioner or treasurer, the excess over the estimated amount shall be borne by the corporation.

Where
estimate
excessive

(3) If the cost of such unfinished work and unsettled claims is less than the estimated cost, the balance remaining in the hands of the municipality shall be applied *pro tanto* to payment of the rates to be levied under the by-law. R.S.O. 1970, c. 255, s. 47.

Powers of
court

48.—(1) The court of revision has jurisdiction and power to review the proposed special assessment and to correct the same as to all or any of the following matters,

- (a) where the owners' portion of the cost is to be specially assessed against the land abutting directly on the work,
 - (i) the names of the owners of the lots,
 - (ii) the frontage or other measurements of the lots,
 - (iii) the amount of the reduction to be made under section 28 in respect of any lot,
 - (iv) the lots which, but for section 63, would be exempt from special assessment,

- (v) the lifetime of the work,
 - (vi) the rate per metre with which any lot is to be specially assessed, and
 - (vii) the exemption or amount of reduction to be made under section 30 in respect of any lot;
- (b) where part of the owners' portion of the cost is to be specially assessed on land not abutting directly on the work, in addition to the matters mentioned in clause (a), as to the lots other than those abutting directly on the work which are or will be immediately benefitted by it, and as to the special assessment which such lots should respectively bear;
- (c) in all cases as to the actual cost of the work. R.S.O. 1970, c. 255, s. 48 (1); 1978, c. 87, s. 39 (11).

(2) The court of revision does not have jurisdiction or authority to review or to alter the proportions of the cost of the work that the lands to be specially assessed and the corporation are respectively to bear according to the provisions of the by-law for undertaking the work. R.S.O. 1970, c. 255, s. 48 (2). No power to alter proportions of cost

49. Notwithstanding subsection 48 (2), the court of revision at any time after the certification of the special assessment roll may reduce any special assessment for the current year and the remaining years of the debenture debt by reason of any gross or manifest error and the amount by which any owner's share of the cost of a work is reduced shall be added to the corporation's share of the cost. R.S.O. 1970, c. 255, s. 49. Power to reduce special assessment where gross error

50.—(1) Where it appears to the court of revision that any lot that has not been specially assessed should be specially assessed, before finally determining the matter, the court shall adjourn its sittings to a future day and shall cause notice in Form 4 to be given to the owner of the lot of the time and place when the adjourned sittings will be held. Omission to assess certain lots

(2) The notice shall be mailed at least six days before the time fixed for the adjourned sittings. Time for mailing notice

(3) If the court of revision determines that any such lot ought to be specially assessed, the court has jurisdiction and power to fix and determine the amount of the special assessment thereon. R.S.O. 1970, c. 255, s. 50. Power to fix special assessment of lots

When
special
assessment
roll to be
final

51. The clerk shall make such corrections in the special assessment roll as are necessary to give effect to the decisions of the court of revision, and the roll when so corrected shall be certified by the clerk, and, when so certified, except in so far as it may be further amended on appeal to the judge, the assessment roll and the special assessment are valid and binding upon all persons concerned and upon the land specially assessed, and the work in respect of which the special assessment roll has been made and certified shall be conclusively deemed to have been lawfully undertaken and proceeded with pursuant to and in accordance with this Act. R.S.O. 1970, c. 255, s. 51.

Appeal to
county
judge

52.—(1) The council or the owner of a lot specially assessed may appeal to the judge of the county court from any decision of the court of revision. R.S.O. 1970, c. 255, s. 52 (1).

Application of
R.S.O. 1980,
c. 31

(2) The provisions of the *Assessment Act* as to appeals to a judge apply to an appeal under subsection (1), except that, in the case of an appeal by the owner of a lot specially assessed, the notice of appeal shall be given to the clerk of the municipality in lieu of the regional registrar of the Assessment Review Court. R.S.O. 1970, c. 255, s. 52 (2); 1972, c. 47, s. 2.

Powers
of judge

(3) The judge has the like jurisdiction and powers as are conferred on the court of revision by section 48, and the provisions of section 50 apply where it appears to the judge that any lot not specially assessed ought to be so assessed.

Further
appeal

(4) Any further appeal lies from the decision of the judge to the Board or the Divisional Court in the same manner as an appeal from a decision of a county judge under the *Assessment Act*, and the provisions of that Act with respect to an appeal from a county judge apply with necessary modifications. R.S.O. 1970, c. 255, s. 52 (3, 4).

BORROWING POWERS

Temporary
loans

53.—(1) The council may agree with any bank or person for temporary advances to meet the cost of the work pending the completion of it. R.S.O. 1970, c. 255, s. 53 (1).

Issue of
debentures

(2) The council may,

(a) when the work undertaken is completed; or

(b) when a firm contract for the carrying out of the work has been entered into whereby the cost of

completing the undertaking is established and construction of the work has commenced,

borrow on the credit of the corporation at large such sums as may be necessary to repay temporary loans made by the corporation pending the completion of the work and to defray the cost of the work undertaken, including the corporation's portion of the cost, and may issue debentures for the sums so borrowed.

(3) Where the council has undertaken the construction of ^{Sewer systems} several sewers connected as a system of sewers,

- (a) the council may not proceed under clause (2) (a) until all the sewers in the system are completed; and
- (b) the council may not proceed under clause (2) (b) until firm contracts for carrying out the work have been entered into whereby the cost of completing all of the sewers in the system is established and construction of the system has commenced,

and there shall be added to the cost of each sewer forming part of the system its proportionate share of the whole of the interest upon the temporary loans made by the corporation pending the construction of all the sewers forming the system as if all the sewers had been constructed at the same time. 1979, c. 52, s. 1.

(4) The provisions of the *Municipal Act* as to by-laws for ^{Application of R.S.O. 1980, c. 302} creating debts apply to by-laws passed under subsection (2), except that it is not necessary,

- (a) that the by-law be submitted to or receive the assent of the electors;
- (b) that any rate be imposed for the payment of the principal of so much of the money borrowed as represents the owners' portion of the cost or of the interest thereon, other than the special rate per metre frontage imposed to meet it,

and except that the debentures, save as provided by section 56, shall be payable within the lifetime of the work. R.S.O. 1970, c. 255, s. 53 (4); 1978, c. 87, s. 39 (12).

(5) The special rates imposed for the owners' portion of ^{Special fund for payment of debentures} the cost shall form a special fund for the payment of the

debentures issued under subsection (2) and the interest thereon and shall not be applicable to or be applied for any other purpose.

General rate
to meet
deficiency
in special
rate

(6) If in any year the amount realized from the special rate imposed to provide for the owners' portion of the cost and interest is insufficient to pay the amount falling due in such year in respect of so much of the debentures as represents the owners' portion of the cost, the council shall provide for the deficiency in the estimates for the following year and levy and collect the same by a general rate, but this does not relieve the land specially assessed from the special rate thereon.

Owners'
portion not
to be
deemed part
of debenture
debt of
corporation
R.S.O. 1980,
c. 302

(7) The amount borrowed under subsection (2), in respect of the owners' portion of the cost, shall not be deemed to be part of the existing debenture debt of the corporation within the meaning of the provisions of the *Municipal Act* limiting the borrowing powers of the municipality.

Corpora-
tion's por-
tion may
be included
in yearly
estimates

(8) Instead of borrowing the amount of the corporation's portion of the cost of a work undertaken, the council may include the same in the estimates of the year.

Disposal of
excess sums

(9) When the amount realized from the debentures exceeds the amount of the cost of the work, the excess sum shall be applied in the manner provided in subsection 170 (3) of the *Municipal Act*, unless all the rates have been levied under the by-law, in which case the excess sum shall be paid *pro tanto* to the owners, at the time such payment is made, of the land on which the rates were levied.

Application
of subs. (9)

(10) Subsection (9) does not apply to a by-law passed prior to the 1st day of January, 1941. R.S.O. 1970, c. 255, s. 53 (5-10).

Consolida-
tion of
by-laws

54.—(1) Where two or more works have been constructed and the by-laws provided for by subsection 53 (2) have been passed, instead of borrowing the separate sums thereby authorized to be borrowed and issuing debentures therefor, the council by by-law, hereinafter called the consolidating by-law, may provide for borrowing the aggregate of such separate sums and for issuing one series of debentures therefor.

Recitals

(2) The consolidating by-law shall show by recitals or otherwise in respect of what separate by-laws it is passed.

Rates not to
be imposed
by consoli-
dating
by-law

(3) It is not necessary that the consolidating by-law shall impose any rate to provide for the payment of the debentures

issued under it or the interest thereon, but the rates imposed by the separate by-laws shall be levied, collected and applied for that purpose.

(4) A consolidating by-law passed under subsection (1) may authorize the issue of debentures in one series notwithstanding that some of the debentures may be for different terms of years from the other debentures to be issued thereunder, provided the sum to be raised in each year under the consolidating by-law shall equal the aggregate of the sums that would have been raised under the separate by-laws had no consolidating by-law been passed. R.S.O. 1970, c. 255, s. 54.

Consolidating by-law may authorize debentures of different terms of years

55. Instead of passing a by-law under section 53 in respect of each individual work, a council may pass one by-law in respect of several local improvement works giving in such by-law in respect of each work substantially the same information as would be given in several by-laws respecting such works, and may provide in such by-law for borrowing the aggregate cost of the several works and for issuing one series of debentures therefor. R.S.O. 1970, c. 255, s. 55.

One by-law for several works

56.—(1) The council shall impose upon the land liable therefor the special assessment with which it is chargeable in respect of the owners' portion of the cost, and the same shall be payable in such annual instalments as the council shall prescribe, but not so as to extend beyond the lifetime of the work unless the work is of the class prescribed in clause 2 (1) (l), in which case the annual instalments may extend over a period of not more than forty years.

Term of annual instalments of special assessment

(2) In fixing the amount of the annual instalments, a sum sufficient to cover the interest shall be added.

Interest

(3) The council may also, either by general by-law or by a by-law applicable to the particular work, prescribe the terms and conditions upon which persons whose lots are specially assessed may commute for a payment in cash the special rates imposed thereon. R.S.O. 1970, c. 255, s. 56.

Commutation of special rates

57. Any special or general rate imposed by a by-law providing for the issue of debentures to pay for the cost or part of the cost of a work undertaken under this Act may be levied by the council as soon as the by-law is passed and no such rate heretofore or hereafter levied shall be held to be illegal by reason of the debentures in respect of which the rate is levied, or any of same, not having been issued at the time of levying the rate. R.S.O. 1970, c. 255, s. 57.

Time special or general rate may be levied

Application of
R.S.O. 1980,
c. 302

58. The provisions of the *Municipal Act* as to the collection and recovery of taxes, and the proceedings that may be taken in default of payment thereof, apply to the special assessments and the special rates imposed for the payment of them. R.S.O. 1970, c. 255, s. 58.

Where by-
law quashed
court may
direct pass-
ing of new
by-law

59.—(1) If the special assessment in respect of it has become confirmed under section 51, no by-law for borrowing money to defray the cost of the work or for imposing the special assessment shall be quashed, set aside or adjudged to be invalid by reason of its illegality or of any defect in it, but the court in which any proceeding for quashing, setting aside or declaring to be invalid the by-law is taken shall, on such terms and conditions as to costs and otherwise as may be deemed proper, direct the council to amend or to repeal the by-law and, where a repealing by-law is directed, to pass a new by-law in proper form in lieu of the repealed by-law, and it is the duty of the council to pass such by-law or by-laws accordingly.

Liabilities
incurred to
be binding

(2) Every liability or obligation incurred and every debenture issued by the corporation under the authority of any such defective or illegal by-law is as effectual and as binding as if the amending or new by-law directed to be passed had been passed and was in force at the time the liability or obligation was incurred or the debenture was issued.

Where
council of its
own motion
directs
passing of
new by-law

(3) Although no proceeding has been taken to quash, set aside or declare invalid the by-law, the council may of its own motion and if required by any person to whom it has incurred any liability on the faith of the by-law shall pass such amending or new by-law as may be necessary to make effectual and binding the liability so incurred and any debenture issued under the authority of such by-law, and the provisions of subsection (2) as to the effect of an amending or new by-law apply to any by-law so passed. R.S.O. 1970, c. 255, s. 59.

REPAIR OF WORK

Repair,
maintenance
and replace-
ment of
works

60.—(1) When a work has been completed, it shall be kept in repair and maintained and may be renewed or replaced at the expense of the corporation and the corporation may by by-law provide for the issue of debentures for such renewal or replacement.

General
duty to
repair not
affected

(2) Nothing in this Act relieves the corporation from any duty or obligation to keep in repair the highways under its jurisdiction to which it is subject either at common law or

under the *Municipal Act*, or otherwise, or impair or pre-judicially affect the rights of any person who is damnified by reason of the failure of the corporation to discharge such duty or obligation. R.S.O. 1970, c. 255, s. 60. R.S.O. 1980, c. 302

61.—(1) Where, at any time during the lifetime of a work undertaken, the corporation fails to keep and maintain it in a good and sufficient state of repair, and, after one month's notice in writing by the owner or occupant of any lot specially assessed requiring the corporation to do so, does not put the work in repair, a judge of the Supreme Court, or a judge of the county court of the county in which the municipality lies, upon the application of any owner or occupant of any land so specially assessed, may make an order requiring the corporation to put the work in repair. Compelling corporation to repair

(2) The judge may determine what repairs are necessary and by his order may direct them to be made in such manner, within such time and under such supervision as he may consider proper. Determination as to necessary repairs

(3) Where a person under whose supervision the repairs are to be made is appointed, the judge may fix and determine the remuneration to be paid to such person and the same shall be paid by the corporation and payment thereof may be enforced in like manner and by the same process as a judgment for the payment of money. Remuneration of person supervising

(4) The order has the same effect and may be enforced in like manner as a peremptory mandamus. Effect of order

(5) If the corporation does not comply with the order of the judge, in addition to any other remedy to which the applicant for the order may be entitled, the judge may authorize the repairs to be made by the applicant and, if made by him, the cost thereof shall be ascertained and determined by the judge, and, when so ascertained and determined, payment thereof may be enforced in like manner and by the same process as a judgment for the payment of money. When repairs may be made by applicant and payment therefor

(6) An appeal lies to the Divisional Court from any order made under this section. R.S.O. 1970, c. 255, s. 61. Appeal

ASSESSMENT OF LAND EXEMPT FROM TAXATION

62. Land on which a church or place of worship is erected or that is used in connection therewith, the land of a university, college or seminary of learning, whether vested in a trustee or otherwise and the land of a board of an ele- Certain lands exempt from taxation liable to be specially assessed

R.S.O. 1980,
cc. 129, 31

mentary or secondary school, as defined in the *Education Act*, is liable to be specially assessed for local improvements, notwithstanding the provisions of the *Assessment Act*. R.S.O. 1970, c. 255, s. 62.

Land
exempt from
taxation for
local im-
provements
to be
specially
assessed

63. Land exempt from taxation for local improvements under any general or special Act shall nevertheless, for all purposes, except petitioning for or against undertaking a work, be subject to the provisions of this Act and shall be specially assessed; but the special assessments imposed thereon that fall due while such land remains exempt are not collectable from the owner thereof, but shall be paid by the corporation. R.S.O. 1970, c. 255, s. 63.

STREET CLEANING, ETC.

Cleaning,
watering,
lighting
streets, etc.

64.—(1) The council may by by-law provide that thereafter the annual cost of cleaning, clearing of snow and ice, watering, oiling, sweeping, lighting, light supplied in excess of that supplied at the expense of the corporation at large, cutting grass and weeds and trimming trees and shrubbery on any street, or any one or more of such services, shall be specially assessed upon the land abutting directly on the street according to the frontage thereof, and the foregoing provisions of this Act do not apply to such services.

Street
lighting,
apportion-
ment of cost

(2) As to any of the services mentioned in subsection (1), the by-law may provide that a part of the annual cost may be assessed upon the lands abutting directly on the street and that the remainder of such cost shall be assumed by the corporation at large.

Application
to defined
areas

(3) Instead of naming the particular street or streets, the by-law may apply to all the streets in a defined section or sections of the municipality.

Special rate

(4) Where the council so provides, the amount of the special rate imposed to defray such cost may be entered on the collector's roll and collected in like manner as other taxes.

Duration
of by-law

(5) The by-law remains in force from year to year until repealed. R.S.O. 1970, c. 255, s. 64.

Power to
construct
works on
boundary
lines

65.—(1) Where a highway forms the boundary between two or more municipalities, although it lies wholly within one or partly within two or more of them, the corporations of the municipalities may agree,

- (a) to undertake in respect of the highway or any part of it any work or service that may be undertaken as a local improvement under this Act;
- (b) as to the council by which the work or service shall be undertaken;
- (c) as to whether the corporation's portion of the cost shall be provided for by borrowing or shall be included in the estimates of the year;
- (d) as to the proportions in which the corporation's portion of the cost shall be borne by such corporations respectively.

(2) The council of the municipality that according to the agreement is to undertake the work or service, hereinafter called the initiating council, has all the powers and shall perform all the duties in respect of it that may be exercised or are to be performed by the council of a municipality that undertakes a work or service as a local improvement under this Act, and the highway shall, for the purposes of the work or service, be deemed to lie wholly within and to be under the exclusive jurisdiction of the initiating council.

Powers and
duties of
initiating
council

(3) The clerk of the initiating council shall forthwith, after the passing of its by-law imposing the special rates to defray the owners' portion of the cost, deliver or transmit by registered mail to the clerk of any municipality in which is situate any land upon which a special rate has been imposed a copy of the by-law certified under his hand and the seal of the corporation to be a true copy.

Certified
copies of
by-law to be
sent to
clerks of
other muni-
cipalities

(4) The rates required by the by-law to be levied and collected in any year upon land in any municipality, other than that by the council of which the by-law is passed, shall be collected by the council of such municipality in like manner as if such rates had been imposed by that council.

Collection
of rates in
other muni-
cipalities

(5) The corporation of each of the municipalities, other than that by the council of which the work or service is undertaken, shall pay to the last-mentioned corporation the sums that are to be levied and collected in that year under subsection (4), and such payment shall be made on demand therefor at any time after the 14th day of December in that year, and shall be made whether or not such rates have been collected from the persons liable to pay them.

Payment
over to
initiating
council

(6) Such payment does not relieve any land specially assessed from the special rate thereon, but it remains liable for the special rate until it is paid.

Payment
not to
relieve land
assessed

Payment
over where
corporation's
portion
included in
estimates

(7) Where the agreement provides that the corporation's portion of the cost shall be included in the estimates of the year, the corporation of each of the municipalities, other than that by the council of which the work or service is undertaken, shall pay to that corporation when the amount of the corporation's portion of the cost is finally determined its share or portion of such cost, and the amount so paid shall be provided for in the estimates for the then current year of the council of the corporation that is to pay it.

Where
corpora-
tion's
portion met
by issue of
debentures

(8) Where the agreement provides that the amount required to defray the corporation's portion of the cost is to be borrowed, the corporation of each of the municipalities, except that by the council of which the work or service is undertaken, shall, in each year during the currency of the debentures issued for the money borrowed, pay to that corporation the same proportion of the principal and the interest payable in that year as under the agreement it is to bear of the corporation's portion of the cost, and the amount that the by-law for borrowing the money requires to be raised in that year shall be reduced by the sum so paid.

Maintenance
and repair

(9) The corporations shall bear the cost of keeping the work in repair in the proportions in which the cost of the work is to be borne by them. R.S.O. 1970, c. 255, s. 65.

Corporation
may assume
owners'
portion of
cost

(10) Where a by-law under section 70 is not in effect in a municipality, the council may, by by-law, provide that the owners' portion of the cost in respect of any work or service undertaken under this section be assumed by the corporation and thereafter such costs shall form part of the corporation's portion of the cost of such work or service. 1976, c. 10, s. 1.

Construction
of bridge
over ravine
separating
municipal-
ities

66.—(1) Where a ravine separates the lands of adjoining municipalities and it is deemed desirable to construct a bridge connecting the lands of the municipalities, the council of either municipality may pass a by-law for undertaking the work of constructing the bridge or of constructing the bridge combined with any other work that may be undertaken as a local improvement, and the provisions of this Act apply except that, subject to subsections (2) and (3), no part of the cost of the work shall be assessed upon lands in the other municipality.

Agreement
with other
municipality
as to pro-
portion of
cost to be
borne by it

(2) Where lands that will be benefitted by the work lie within the limits of any municipality other than the initiating municipality, the council of the initiating municipality may agree with the council of the other municipality as to the proportion of the cost of the work to be borne by the

corporation of the municipality and the lands within it, and such last-mentioned council may pass a by-law for the issue of debentures for the amount of such proportion, payable within such period not exceeding twenty years as the council may determine, and it is not necessary that the by-law be submitted to the vote of the electors.

(3) The council of such other municipality may proceed under this Act for the purpose of assessing the lands within it, that will be benefitted by the work, their proper proportion of the amount that it has agreed to contribute to the cost of the work in the same way as if the work had been undertaken by such council and the amount to be so contributed were the cost of the work, and the proceedings shall be in accordance with the provisions of this Act. R.S.O. 1970, c. 255, s. 66.

Powers of other municipality to specially assess land

SPECIAL PROVISIONS AS TO TOWNSHIPS, TOWNS, VILLAGES, ETC.

67. In addition to the works authorized to be undertaken in section 2, the council of a township or village may undertake as a local improvement the construction, renewal or replacement of water works, the laying of mains and other appliances to connect with any existing system of water works, whether owned by the corporation or any other person, the construction of sewage treatment works, or the construction of such works, plant, appliances and equipment as may be necessary for street lighting. R.S.O. 1970, c. 255, s. 67.

Additional works in townships and villages

68.—(1) The council of a municipality may, in the by-law for undertaking any work as a local improvement, define an area in the municipality and provide that the cost of the work including debenture charges and the cost of maintenance and management of the work including the cost of the utility supplied shall be assessed and levied on the rateable property in the area.

Assessment of cost of works in areas

(2) Where the work is the construction of a watermain, sewer, sidewalk, curb, pavement or street lighting, the by-law may provide that the whole or a part of the cost of the work shall be assessed upon the lots fronting or abutting on the work and in such case the balance of the cost including debenture charges, if any, and the cost of maintenance and management including the cost of the utility supplied shall be assessed and levied on the rateable property in the area.

Assessment of cost of certain works

(3) The corporation may by by-law provide for the issue of debentures for any work undertaken under this section.

Debentures

Notice of
intention
unnecessary

(4) Where a local improvement area is defined under this section and the by-law provides that the cost of the work shall be assessed and levied on the rateable property in the area, it is not necessary to serve notice of intention to construct the work upon the owners of lots in the area. R.S.O. 1970, c. 255, s. 68.

Alteration,
etc., of
areas

69. Where a local improvement area is defined under section 68, the area may by by-law, subject to the approval of the Board, be enlarged, reduced, altered, dissolved or amalgamated with any other such area and in such case the Board shall make any necessary adjustments of the assets and liabilities of the areas affected. R.S.O. 1970, c. 255, s. 69.

ADOPTION OF LOCAL IMPROVEMENT SYSTEM

Adoption of
local im-
provement
system
R.S.O. 1980,
c. 302

70.—(1) The council of a corporation by by-law passed with the assent of the municipal electors, in accordance with the *Municipal Act*, may provide that all works that may be undertaken as local improvements, or any one or more classes or descriptions of such works thereafter, or after a day named in the by-law, shall be undertaken as local improvements and not otherwise.

Repeal of
by-law

(2) The by-law may be repealed, but only by a by-law passed with the like assent.

Renewal or
replacement
of local
improve-
ment
works

(3) Notwithstanding subsection (1), the council of a corporation may by by-law provide for the renewal or replacement of any local improvement work at the expense of the corporation, or partly at the expense of the corporation and partly as a local improvement, or wholly as a local improvement. R.S.O. 1970, c. 255, s. 70.

MISCELLANEOUS

Special
rates and
covenant
against en-
cumbrances

71. The special assessment and the special rates charged or chargeable upon land for or in respect of the cost of any work undertaken, whether upon petition or otherwise, except so much of them as is in arrear and unpaid, shall not, as between a vendor and a purchaser, or as respects a covenant against encumbrances, or for the right to convey, or for quiet possession free from encumbrances, be deemed to be an encumbrance upon the land upon which the special rate is charged or chargeable. R.S.O. 1970, c. 255, s. 71.

72. Proceedings for undertaking a work begun by one council may be continued, and the work may be begun, continued and completed by a succeeding council. R.S.O. 1970, c. 255, s. 72.

73. The Board may approve of forms of by-laws, notices and other proceedings to be passed, given or taken under or in carrying out the provisions of this Act, and every by-law, notice or other proceeding that is in substantial conformity with the form so approved shall not be open to objection on the ground that it is not in the form required by the provisions of this Act applicable thereto, but the use of such forms is not obligatory. R.S.O. 1970, c. 255, s. 73.

FORM 1

(Section 10)

Take notice that

1. The council of The Corporation of the.....of.....intends to construct as a local improvement (*describe the work*) on (or in)street between (*describe the points between which the work is to be constructed*) and intends to specially assess a part of the cost upon the land abutting directly on the work (*in case other land is to be specially assessed, add*) and upon the following land that is immediately benefitted by the work (*describe the land*).

2. The estimated cost of the work is \$....., of which \$.....is to be paid by the Corporation. The estimated cost per metre frontage is \$..... The special assessment is to be paid in.....annual instalments.

3. A petition to the council will not avail to prevent its construction, but a petition against the work or the manner in which it has been undertaken may be made, pursuant to section 10 of the *Local Improvement Act*, to the Ontario Municipal Board, by a majority of the owners representing at least one-half of the value of the lots that are to be specially assessed therefor.

4. A by-law for undertaking the work will be considered by the council at a meeting thereof to be held on the.....day of....., 19...., or at a regular or special meeting thereof to be held thereafter.

Dated.....Clerk

(*Note.—Where that part of the municipality in which the land to be specially assessed is situate is divided into districts or sections, the form will be altered to show the special rate per metre frontage in each district or section.*)

R.S.O. 1970, c. 255, Form 1; 1978, c. 87, s. 39 (13).

FORM 2

(Section 8)

Take notice that

1. The council of The Corporation of the.....of.....intends to construct as a local improvement (*describe the work*) on (or in)street between (*describe the points between which the work is to be constructed*) and intends to specially assess a part of the cost upon the land abutting directly on the work (*in case other land is to be specially assessed, add*) and upon the following land that is immediately benefitted by the work (*describe the land*).

2. The estimated cost of the work is \$, of which \$is to be paid by the Corporation. The estimated cost per metre frontage is \$ The special assessment is to be paid inequal annual instalments and the estimated annual rate per metre frontage iscents.

3. Application will be made by the Corporation to the Ontario Municipal Board for its approval of the undertaking of the work and,

- (a) where this Form is published under subsection 8 (3) of the *Local Improvement Act*, any owner may within twenty-one days after the first publication of this notice file with the clerk his objection to the work being undertaken; or
- (b) where this Form is mailed and published under subsection 8 (4) of the said Act, any owner may within twenty-one days after the publication or mailing of the notice, whichever is later, file with the clerk his objection to the work being undertaken.

4. The Board may approve of the work being undertaken, but before doing so it may appoint a time and place when any objections to the work will be considered.

Dated..... Clerk

(Note.—Where it is intended to assess part of the cost upon non-abutting land, the form of notice is to be amended to show the cost per metre frontage and the annual frontage rate to be charged against such lands.)

R.S.O. 1970, c. 255, Form 2; 1979, c. 52, s. 3 (1).

FORM 3

(Section 12)

Take notice that

1. The council of The Corporation of the..... of.....intends to construct (*describe the work*) on (*or in*).....street between (*describe the points between which the work is to be constructed*) as a local improvement and intends to specially assess a part of the cost upon the land abutting directly on the work (*in case other land is to be specially assessed, add*) and upon the following land that is immediately benefited by the work (*describe the land*).

2. The estimated cost of the work is \$, of which \$ is to be paid by the Corporation, and the estimated cost per metre frontage is \$The special assessment is to be paid inannual instalments.

3. Persons desiring to petition against undertaking the work must do so on or before the.....day of....., 19....

Dated..... Clerk

(Note.—Where that part of the municipality in which the land to be specially assessed is situate is divided into districts or sections, the form will be altered to show the special rate per metre frontage in each district or section.)

R.S.O. 1970, c. 255, Form 3; 1979, c. 52, s. 3 (2).

FORM 4

(Sections 44 (2), 50 (1))

Take notice that

1. The council of The Corporation of the.....of.....
has constructed as a local improvement (*describe the work*) on (or in).....
street between (*describe the points between which the work has been constructed*).

2. The cost of the work is \$, of which \$.....
is to be paid by the Corporation. The special rate per metre frontage is
\$ The special assessment is to be paid in
.....annual instalments.

3. The estimated lifetime of the work is.....years.

4. A court of revision will be held on the.....day
of....., 19...., at.....o'clock at the
(*insert place of meeting*) for the purpose of hearing complaints against the
proposed assessments or the accuracy of frontage measurements and any
other complaint that persons interested may desire to make and that is
by law cognisable by the court.

(*or where the court of revision proceeds under section 50*)

5. You are served with this notice because the court of revision is of
opinion that your lot, though not specially assessed, should be specially
assessed in respect of the owners' portion of the cost of the work and an
adjourned sittings of the court will be held on the.....
day of....., 19...., at.....o'clock
at the (*insert place of meeting*) when the matter will be determined by the court.

Dated.....

Clerk

(*Note.—Where that part of the municipality in which the land to be specially
assessed is situate is divided into districts or sections, the form will be
altered to show the special rate per metre frontage in each district or section.*)

R.S.O. 1970, c. 255, Form 4; 1979, c. 52, s. 3 (3).

CHAPTER 251

Local Roads Boards Act

1. In this Act,

Interpre-
tation

- (a) “board” means a board of a local roads area;
- (b) “land” includes land covered with water;
- (c) “local roads area” means a local roads area established under this Act;
- (d) “Minister” means the Minister of Transportation and Communications;
- (e) “owner” means a person entitled to convey land and whose interest in the land is defined and whose name is specified in an instrument registered in the proper land registry office, and includes a lessee of the Crown and a locatee under the *Public Lands Act*;
- (f) “prescribed” means prescribed by the regulations made under this Act;
- (g) “register” means the Local Roads Tax Register;
- (h) “secretary-treasurer” means a secretary-treasurer appointed by a board under this Act.

R.S.O. 1980,
c. 413

2. This Act applies only in territory without municipal organization. R.S.O. 1970, c. 256, s. 2.

3. Any matter to be determined by a vote at any meeting held under the authority of this Act shall be determined by a majority of the owners voting on the matter, and the owners shall decide how the voting shall be conducted. R.S.O. 1970, c. 256, s. 3.

4.—(1) Every owner of land in a local roads area of the full age of eighteen years, including the chairman of the meeting, is entitled to vote on any matter to be decided by a vote. R.S.O. 1970, c. 256, s. 4 (1); 1971, c. 98, s. 4, Sched., par. 21.

Qualification
of voters

- Idem** (2) If an objection is made to the right of any person to vote at a meeting, the chairman shall require the person to identify the land in respect of which he claims the right to vote and to take an oath or affirmation that he is of the full age of eighteen years and the owner of such land. R.S.O. 1970, c. 256, s. 4 (2); 1971, c. 98, s. 4, Sched., par. 21.
- Qualification of trustees** **5.** No person shall be elected or appointed a trustee of a board unless he is,
- (a) of the full age of eighteen years;
 - (b) a Canadian citizen; and
 - (c) an owner of land in the local roads area or proposed local roads area, as the case may be, in respect of which no taxes of a preceding year or years payable under this Act are in arrears. R.S.O. 1970, c. 256, s. 5; 1971, c. 98, s. 4, Sched., par. 21.
- Declaration of office** **6.** Every person elected or appointed to a board or appointed secretary-treasurer of a board shall, before entering upon his duties, take a declaration of office in the prescribed form. R.S.O. 1970, c. 256, s. 6.
- Meeting for establishment of area and board** **7.—**(1) Ten or more owners of land in a proposed local roads area may, in writing, appoint one of their number to call a meeting of all owners of land in such area to consider the establishment of a local roads area.
- Notice of meeting** (2) The owner so appointed shall call a meeting within ten days of his appointment by posting up in at least six conspicuous places and at each post office and school house in the proposed local roads area a notice setting forth a description or illustration of the roads to be included in and the boundaries of the proposed local roads area, the place, date, time and purpose of the meeting, the date of the posting of the notice and his name and address.
- Date of meeting** (3) The date of the meeting shall be at least ten days after the date of the posting up of the last notice.
- Idem** (4) The meeting shall take place at the time and place set forth in the notice, and the owner appointed under subsection (1) shall preside at the meeting as chairman, but, if he is absent or declines to act, the owners of land in the proposed local roads area who are present at the meeting shall elect another of their number to act as chairman.

(5) The owners of land in the proposed local roads area ^{Secretary} who are present at the meeting shall elect a secretary to record the proceedings.

(6) The owners of land in the proposed local roads area ^{Area and roads determined by vote} who are present at the meeting shall by vote determine the boundaries of the proposed local roads area, which area may be smaller but not larger than the area originally proposed, and the local roads to be included therein.

(7) Where a majority of the owners of land in the pro- ^{Election of trustees, petition to Minister} posed local roads area vote in favour of the establishment of a local roads area,

(a) the owners of land in the area who are present at the meeting shall elect three of their number to be trustees of the board; and

(b) the secretary shall forward to the Minister a petition in the prescribed form requesting that the proposed local roads area approved by the vote of the owners under subsection (6) be established as a local roads area and that the local roads approved by such vote be included therein. R.S.O. 1970, c. 256, s. 7.

8.—(1) Upon receipt of a petition, the Minister, if he con- ^{Minister's order} siders it in the public interest so to do for the purposes of this Act, may, by order in writing, establish the proposed local roads area, or any smaller or larger area as he considers appropriate, as a local roads area, and he may designate the local roads to be included therein.

(2) Upon the establishment of a local roads area, the ^{Trustees form board} trustees elected under subsection 7 (7) form the board for the year in which they were elected and until successors elected in their stead have taken office. R.S.O. 1970, c. 256, s. 8.

9.—(1) Every board shall meet within twenty-one days of ^{First meeting} the receipt of the order of the Minister establishing the local roads area.

(2) Every board shall at its first meeting elect one of their ^{Chairman} number to be chairman of the board. R.S.O. 1970, c. 256, s. 9.

10.—(1) The board shall annually, and may as often as it ^{Duties of board, inspection} considers necessary, inspect the local roads in the local roads area.

roadwork

(2) The board may, within the limit of the money available to pay for such work and subject to the approval of the Minister, determine the work to be performed on local roads in the local roads area.

Trustee
failing
to act

(3) If for any reason a trustee is unable or unwilling to act, the remaining two trustees may appoint an owner of land in the local roads area to serve for the remainder of the term of such trustee, and, where he is the chairman of the board, a new chairman shall be elected by the trustees.

Secretary-
treasurer

(4) Every board shall appoint a secretary-treasurer who may be a member of the board other than the chairman and, subject to such direction as the Minister may give, shall pay the secretary-treasurer such salary as the board may determine.

Security to
be furnished
by secretary-
treasurer

(5) Before entering on the duties of his office, the secretary-treasurer shall give annually such security as the board may direct for the faithful performance of such duties and for duly accounting for all moneys that come into his hands.

Nature of
security

R.S.O. 1980,
c. 192

(6) The security to be given shall be by the bond, policy or guarantee contract of a guarantee company within the meaning of the *Guarantee Companies Securities Act*, and shall be in such form and on such terms as the Minister may approve.

Duties

(7) In addition to the other duties prescribed by this Act, a secretary-treasurer shall attend all meetings of the board, keep minutes of such meetings, carry on correspondence as directed by the board, receive and safely keep all moneys paid to the board and maintain books of account and other records as may be required by the Minister or the board. R.S.O. 1970, c. 256, s. 10.

Annual
meeting

11.—(1) Before the 1st day of November in each year, the board shall call an annual meeting of the owners of land in the local roads area for the election of the successors of the members of the board and for the conduct of other business, including the presentation of a statement of the receipts and disbursements of the board and the auditor's report, if one has been made.

Idem

(2) The secretary-treasurer shall send notice of the time, date and place of the annual meeting to every owner of land in the local roads area and to the Minister not less than fourteen days before the meeting. R.S.O. 1970, c. 256, s. 11.

12. The trustees elected at an annual meeting shall assume office on the 1st day of January in the year next following the year in which they were elected. R.S.O. 1970, c. 256, s. 12. Trustees,
term of
office

13. The chairman of the board shall act as chairman of the annual meeting. R.S.O. 1970, c. 256, s. 13. Chairman

14.—(1) If in any year the board fails to call an annual meeting before the 1st day of November, the secretary-treasurer shall forthwith call such a meeting and shall give notice thereof as provided in subsection 11 (2), and shall act as chairman of the meeting notwithstanding that the chairman of the board attends the meeting. R.S.O. 1970, c. 256, s. 14 (1). Annual
meeting,
on call of
secretary-
treasurer

(2) If in any year both the board and the secretary-treasurer fail to call an annual meeting or, having called an annual meeting, fail to put to a vote a proposal as required by the Minister under subsection 16 (2), any ten owners of land in the local roads area may call a meeting as provided in section 7 and may appoint one of their number to act as chairman at the meeting, and such owner shall act as chairman notwithstanding that the chairman of the board attends the meeting. 1979, c. 8, s. 2. on call of
ten owners

(3) Any expense incurred by an owner in calling or providing for a meeting under subsection (2) shall be deemed to be a debt due and owing to him by the trustees and the secretary-treasurer, who are jointly and severally liable for the debt, and he may bring an action for the recovery of such debt in any court of competent jurisdiction. R.S.O. 1970, c. 256, s. 14 (3). Expenses
to be a debt

15. Upon receipt of notice of an annual meeting, the Minister shall cause to be prepared a statement of the moneys credited to the account of the board during the period since the last such statement and of the expenditures charged against the account for the same period, and shall send such statement to the secretary-treasurer at least three days before the date of the annual meeting. R.S.O. 1970, c. 256, s. 15. Financial
statement

16.—(1) Where it is proposed that,

(a) the boundaries of a local roads area be altered;

(b) any local road be added to or removed from a local roads area;

(c) any local road included in a local roads area be extended; or

Alteration of
boundaries
or local roads

(d) the minimum annual tax imposed under section 22 be altered,

the proposal shall be put to a vote at an annual meeting, and the notice of such annual meeting shall outline the proposal. R.S.O. 1970, c. 256, s. 16 (1); 1979, c. 8, s. 3 (1).

Idem

(2) Where it is proposed by the Minister that the boundaries of a local roads area be altered, the Minister may, by notice to the secretary-treasurer of the board affected, require the board to put the proposal to a vote at the next annual meeting. 1979, c. 8, s. 3 (2).

Notices

(3) Where it is proposed that a local roads area be enlarged, in addition to the notice required under subsection (1), the secretary-treasurer shall post within the new area that is proposed to be added to the existing local roads area notices of the proposal, setting forth a description or illustration of the boundaries of the new area and the place, date and time of the annual meeting, and all owners of land in the new area may attend the annual meeting and vote upon the proposal.

Record of vote

(4) Where it is proposed that the boundaries of a local roads area be altered, the secretary-treasurer shall record separately the vote of the owners of land within the area that is proposed to be added to or to be removed from the local roads area. R.S.O. 1970, c. 256, s. 16 (2, 3).

Notification to Minister

(5) Where a vote has been taken under subsection (1) or (2), the secretary-treasurer shall forward to the Minister a copy of the proposal together with a statement of the results of the vote showing the vote of the owners for and against the proposal and, in the case of a proposal made under clause (1) (a) or under subsection (2), the vote of the owners of land in the area that is proposed to be added to or to be removed from an existing area for and against the proposal.

Order by Minister

(6) Where the Minister receives a copy of a proposal together with a statement of results as set out in subsection (5), he, if he considers it in the public interest so to do, may by order in writing alter the boundaries of the local roads area or the roads included therein in accordance with the proposal or in such other manner as he considers appropriate. 1979, c. 8, s. 3 (3).

Vote on dissolution

17.—(1) Where it is proposed that a board and a local roads area be dissolved, the proposal shall be put to a vote at an annual meeting, and the notice of such annual meeting shall outline the proposal.

Notification to Minister

(2) Where the majority of owners present at an annual meeting approve a proposal that the board and its local roads area be dissolved, the secretary-treasurer shall forthwith for-

ward to the Minister a copy of the proposal, together with a statement of the vote for and against the proposal, and the Minister, if he considers it in the public interest so to do, may by order in writing dissolve the board and the local roads area. R.S.O. 1970, c. 256, s. 17 (1, 2).

(3) Where a board and its secretary-treasurer fail to call an annual meeting as herein provided and no meeting is called under subsection 14 (2), the Minister may by order in writing dissolve the board and the local roads area. R.S.O. 1970, c. 256, s. 17 (3); 1979, c. 8, s. 4. Dissolution
by Minister

(4) Where moneys remain in the account maintained by the Minister to the credit of a board that has been dissolved, the Minister may order the moneys forfeited to the Treasurer of Ontario or he may expend them on the local roads in the former local roads area. R.S.O. 1970, c. 256, s. 17 (4). Surplus
funds

18. No action shall be brought against the Crown, a board or any trustee elected or appointed under this Act for damage caused by any default in the maintenance of a local road in a local roads area, and neither the Crown nor a board nor any such trustee is liable for any damage sustained by any person using such local road. R.S.O. 1970, c. 256, s. 18. Liability
for damages

19. All land as defined in the *Provincial Land Tax Act* in a local roads area is liable to assessment and taxation under this Act, subject to the exemptions from taxation enumerated in paragraphs 1 to 14 and 16 to 18 of subsection 3 (1) of the *Provincial Land Tax Act*. R.S.O. 1970, c. 256, s. 19; 1979, c. 8, s. 5. Land
assessable
and taxable

20.—(1) The assessment of land in a local roads area under the *Provincial Land Tax Act* shall be the assessment of such lands for the purposes of this Act. Land
assessed
under
R.S.O. 1980,
c. 399

(2) Notwithstanding subsection (1), where the assessment of land in a local roads area is retroactively increased or decreased under the *Provincial Land Tax Act*, the tax paid or to be paid by the owner of such land under this Act shall be adjusted accordingly. Revision of
assessment

(3) Where any taxable land in a local roads area is not assessed under the *Provincial Land Tax Act* but is assessed under the *Education Act*, the assessment under the *Education Act* shall be the assessment of such land for the purposes of this Act. R.S.O. 1970, c. 256, s. 20 (1-3). Where land
assessed
under
R.S.O. 1980,
c. 129

(4) Where any taxable land in a local roads area is not assessed under the *Provincial Land Tax Act* or under the Other
cases

R.S.O. 1980,
c. 129

Education Act, such land shall be assessed for taxation purposes of this Act at the following rates:

1. For each dwelling, \$1,000.
2. For each building other than a dwelling, such rate of assessment as may be prescribed.
3. For forested land, \$10 a hectare.
4. For cleared land, \$15 a hectare.
5. For all other land, \$5 a hectare. R.S.O. 1970, c. 256, s. 20 (4); 1979, c. 8, s. 6 (1).

Interpre-
tation

(5) For the purposes of subsection (4),

(a) "hectare" includes a part of a hectare; and

(b) "dwelling" may include two or more buildings used as a single-dwelling unit. R.S.O. 1970, c. 256, s. 20 (5); 1979, c. 8, s. 6 (2).

Annual levy

21.—(1) Every board shall levy annually on the whole of the assessment for taxable land in the local roads area a sum equal to the sum estimated by the board to be required for the purposes of the board during the year.

Idem

(2) In preparing its estimates, every board shall make due allowance for any surplus of any previous year that will be available in the current year and for any uncollectable taxes and for any moneys to be credited to the board under sections 31 and 32 in the current year. R.S.O. 1970, c. 256, s. 21.

Minimum
tax

22.—(1) The minimum annual tax imposed under this Act in respect of the land of any owner is the minimum annual tax approved by a majority of owners present at an annual meeting, but where there is no such approval, the minimum annual tax is \$10.

Idem

(2) Where a minimum annual tax is approved under subsection (1), that minimum annual tax as approved remains in effect until a further variation is approved at a subsequent annual meeting. 1979, c. 8, s. 7.

Annual tax

23. The tax levied under this Act in any year becomes due and is payable to the board on the 1st day of June in that year. R.S.O. 1970, c. 256, s. 23.

24.—(1) A tax bill shall be sent by the secretary-treasurer ^{Tax bill} to every owner of land in the local roads area on or before the 1st day of June in the year in which the tax is payable.

(2) The tax bill shall show the assessed value of the land, ^{Idem} the tax rate, the amount of tax payable and such other matters as are prescribed. R.S.O. 1970, c. 256, s. 24.

25.—(1) The secretary-treasurer shall keep a register, ^{Local Roads Tax Register} to be known as the Local Roads Tax Register, in which he shall set down the name and address in full of every person in the local roads area assessed and taxed under this Act, a brief description of the land in respect of which such person is taxed, the amount of its assessment and taxation in each year, the amount of taxes paid from time to time, and the balance of unpaid taxes, if any. R.S.O. 1970, c. 256, s. 25 (1).

(2) The address of an owner in the register, where the owner has given the secretary-treasurer notice in writing of his address, shall be the address in such notice, and, where the owner has not given the secretary-treasurer such a notice, shall be the address for the owner shown in the proper land registry office, as the case may be, for that owner or for the last registered owner of the land. ^{Idem} R.S.O. 1970, c. 256, s. 25 (2); 1979, c. 8, s. 8.

26.—(1) Where any tax under this Act remains unpaid on the 1st day of August in the year in which it is payable, a ^{Penalty on unpaid tax} penalty of 10 per cent shall be added thereto.

(2) Where any tax or penalty remains unpaid on the 1st ^{Idem} day of August in the year next following the year in which it is payable, a penalty of 10 per cent shall be added thereto, and, where the whole or any part of such tax or penalties remains unpaid on the 1st day of August in any subsequent year, a further penalty of 10 per cent of the taxes and penalties remaining unpaid shall be added thereto.

(3) Any penalty imposed under this section shall be deemed ^{Idem} to be tax due and payable under this Act. R.S.O. 1970, c. 256, s. 26.

27.—(1) The taxes and penalties due upon any land with ^{Who liable for taxes} costs may be recovered as a debt due to the board from the owner originally assessed therefor and from any subsequent owner of the whole or any part thereof, saving his recourse against any other person, and are a special lien on the land in priority to every claim, privilege, lien or encumbrance of every person except the Crown, and the lien and its priority

are not lost or impaired by any neglect, omission or error of the board or of any person appointed or assigned to any work in the course of the administration of this Act, or by want of registration.

Action for
recovery of
taxes and
penalties

(2) The secretary-treasurer, with the approval of the board, may bring an action on behalf of and in the name of the board for the recovery of taxes and penalties due upon any lands in any court of competent jurisdiction.

Liability in
respect of
action

(3) Any liability incurred by or on behalf of the board in respect of an action brought by the secretary-treasurer under subsection (2) is a charge against the assets of the board, and no personal liability shall be incurred in respect thereof by the secretary-treasurer or any trustee elected or appointed under this Act. R.S.O. 1970, c. 256, s. 27.

Delivery of
tax bills

28. A tax bill or a notice required to be sent under this Act shall be sent by prepaid first-class mail to the address of the owner or his agent as shown on the register. R.S.O. 1970, c. 256, s. 28.

Billing joint
owners, etc.

29.—(1) Where land is owned by two or more persons, either jointly or otherwise, a secretary-treasurer may send notices and tax bills issued under this Act to such part-owner as is designated by the other part-owners, and, where the part-owners fail to designate a part-owner for this purpose or where they fail to agree on which part-owner should be designated, a secretary-treasurer may select a part-owner to whom such notices and tax bills may be sent.

Idem

(2) Where a secretary-treasurer designates the part-owner to whom such notices and tax bills may be sent, he shall notify the other part-owners of his designation.

Idem

(3) Notices and tax bills sent to a part-owner designated under subsection (1) shall be deemed to have been sent to the other part-owners. R.S.O. 1970, c. 256, s. 29.

Remission
of tax to
Minister

30. The secretary-treasurer shall remit to the Minister an amount equal to the amount of the tax moneys received by him from the owners of land within the local roads area less the amount required to defray the incidental expenses and administrative costs of himself and of the board. R.S.O. 1970, c. 256, s. 30.

Credits

31.—(1) The moneys received by the Minister from a board shall be paid into the Consolidated Revenue Fund and credited to that board, and the Minister shall cause to be credited to that board an amount equal to twice the amount of the moneys so received.

(2) For the purpose of determining the amount to be credited to a board under subsection (1), the moneys paid by a board to its secretary-treasurer under subsection 10 (4) shall be deemed to have been received by the Minister. R.S.O. 1970, c. 256, s. 31. ^{Idem}

32. In addition to the amounts credited to a board by the Minister under section 31, the Minister may annually credit to a board, in respect of unoccupied Crown land in the local roads area, an amount that the rate levied on lands in the local roads area would produce based on the value of such Crown land, determined at the rate of \$10 for each metre of frontage of such Crown land on a local road included in a local roads area, but such amount shall not exceed twice the amount remitted to the Minister under section 30. R.S.O. 1970, c. 256, s. 32; 1979, c. 8, s. 9. ^{Credits re unoccupied Crown land}

33.—(1) The Minister shall cause the moneys credited to each board to be spent on the local roads area in carrying out work determined by the board and approved by him under section 10, or in acquiring right-of-way for roads. R.S.O. 1970, c. 256, s. 33 (1). ^{Expenditure of moneys}

(2) For any of the purposes of this Act, the Minister may exercise any of his powers under Part I of the *Public Transportation and Highway Improvement Act*, including the power to expropriate land. R.S.O. 1970, c. 256, s. 33 (2); 1971, c. 61, s. 1. ^{Powers R.S.O. 1980, c. 421}

(3) All land heretofore or hereafter acquired under subsection (2) is vested in the Crown in right of Ontario and is under the jurisdiction and control of the Minister and when no longer required for the purposes of this Act may be sold, leased or otherwise disposed of by the Minister. R.S.O. 1970, c. 256, s. 33 (3). ^{Land vested in Crown}

34.—(1) A board may engage a licensed public accountant to audit its accounts and transactions, including the account maintained by the Minister, and to make a report to it, and the accountant's fee shall be paid by the Minister out of the moneys held by him to the credit of the board. ^{Audit}

(2) The Minister may at any time cause the accounts and transactions of a board to be audited. R.S.O. 1970, c. 256, s. 34. ^{Idem}

35.—(1) Where any part of the tax imposed under this Act remains unpaid for a period of two years or more, the board may cause to be filed in the proper land registry office a caution in the prescribed form, and thereupon the ^{Notice of forfeiture}

secretary-treasurer shall send by registered mail a notice to the owner and to every person appearing from search or inquiry at the proper land registry or sheriff's office to be owner of the land in respect of which the default has been made, and to every person appearing from such search or inquiry to have an interest therein, stating that, unless the total amount of tax and penalties due and payable under this Act and the prescribed costs are paid within twelve months of the mailing of the notice, the land and every interest therein will be liable to be forfeited to and to be vested in the Crown. R.S.O. 1970, c. 256, s. 35 (1); 1979, c. 8, s. 10 (1).

Idem

(2) Where no letters patent from the Crown have issued granting land in respect of which the tax imposed under this Act remains unpaid for a period of two years or more, the secretary-treasurer shall send by registered mail the notice mentioned in subsection (1) to the person entered in the register as the owner of the land, and the sending of such notice shall be deemed to be in compliance with subsection (1). R.S.O. 1970, c. 256, s. 35 (2).

Declaration of forfeiture

(3) Where any part of the tax, penalties and costs remains unpaid twelve months after the mailing of the notice under subsection (1) or (2), the secretary-treasurer shall so certify to the Minister of Natural Resources, and upon receipt of such certificate the Minister of Natural Resources by a certificate may declare the lands and every interest therein forfeited to and vested in the Crown, and thereupon, subject to subsection (4), the land and every interest therein vest in the Crown absolutely freed and discharged from every estate, right, title, interest, claim or demand therein or thereto, whether existing, arising or accruing before or after such forfeiture is declared, and the land may be granted, sold, leased or otherwise disposed of in the same manner as public lands may be dealt with under the laws of Ontario. R.S.O. 1970, c. 256, s. 35 (3); 1972, c. 4, s. 12.

Easements

(4) Where a dominant tenement is forfeited, any easement appurtenant thereto passes to the Crown, and, where a servient tenement is forfeited, the forfeiture does not affect any easement to which the servient tenement is subject. R.S.O. 1970, c. 256, s. 35 (4).

Registration of certificate

(5) Upon receipt of a certificate of forfeiture, the proper land registrar shall register it, and it is conclusive evidence of the forfeiture to the Crown of the land and every interest therein so certified to be forfeited, and it is not open to attack in any court by reason of the omission of any act or thing leading up to the forfeiture. R.S.O. 1970, c. 256, s. 35 (5); 1979, c. 8, s. 10 (2).

(6) Upon registration of a certificate of forfeiture in the proper land registry office, the *Land Titles Act* or the *Registry Act*, as the case may be, ceases to apply to the land forfeited, and the land registrar shall note that fact in his register in red ink. R.S.O. 1970, c. 256, s. 35 (6); 1979, c. 8, s. 10 (3).

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cc. 230, 445
not to apply
to forfeited
lands

36. Where land has been forfeited to the Crown in error under this Act, the Minister of Natural Resources, by a certificate under his hand, may annul the forfeiture in so far as it has reference to land forfeited to the Crown in error, and thereupon such land reverts to the owner of the land at the time of forfeiture, his heirs, successors or assigns, subject to any lien, mortgage or charge, as if the forfeiture had never occurred. R.S.O. 1970, c. 256, s. 36; 1972, c. 4, s. 12.

Land
forfeited
in error

37. The moneys required for the purposes of this Act shall be paid out of the moneys appropriated therefor by the Legislature. R.S.O. 1970, c. 256, s. 37.

Expenses

38. The Lieutenant Governor in Council may make regulations,

Regulations

- (a) prescribing forms and providing for their use;
- (b) prescribing matters, other than those specified in subsection 24 (2), that shall be shown on tax bills;
- (c) prescribing the rate of assessment for buildings, other than dwellings, for the purposes of subsection (4);
- (d) prescribing the costs to be paid under subsection 35 (1).
- (e) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

R.S.O. 1970, c. 256, s. 38.

39. Where a board is established under this Act, the *Statute Labour Act* shall, on the 1st day of January next following the date of the establishment of the board, cease to apply to the local roads area administered by that board, and, where the local roads area includes all of an area administered by road commissioners elected under the *Statute Labour Act*, the road commissioners shall transfer to the board any assets held by them in their capacity as road commissioners, and, where the local roads area includes part of an area administered by road commissioners elected under the *Statute*

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Labour Act, the road commissioners may transfer to the board any assets held by them in their capacity as road commissioners in respect of such part. R.S.O. 1970, c. 256, s. 39.

CHAPTER 252

Local Services Boards Act

1. In this Act,Interpre-
tation

(a) “Board” means a Local Services Board established under this Act;

(b) “Board area” means the geographical area within which the Board may exercise its jurisdiction;

(c) “inhabitant”, except for the purposes of sections 3 and 31, means a permanent resident of a Board area or an owner of property situate in a Board area, who is a Canadian citizen and who has attained the full age of eighteen years;

(d) “Minister” means the Minister of Northern Affairs;

(e) “owner” means a person entitled to convey land and whose interest in the land is defined and whose name is specified in an instrument registered in the proper land registry office. 1979, c. 82, s. 1.

2. This Act applies only in territory without municipal organization. 1979, c. 82, s. 2. Application

3.—(1) In this section and in section 31, “inhabitant” means a permanent resident of a proposed Board area or an owner of property situate in a proposed Board area, who is a Canadian citizen and who has attained the full age of eighteen years. Interpretation

(2) Any ten inhabitants desiring the establishment of a Local Services Board may, in writing, authorize and name one of their number to call a meeting of the inhabitants to consider the desirability of establishing a Local Services Board. Calling of meeting

(3) Where the person named does not call a meeting within ten days after being authorized to do so, any person who signed the authorization may call a meeting. Notice

Idem

(4) The notice calling the meeting,

(a) shall be in Form 1;

(b) shall set forth by description or drawing the proposed Board area and the place, date, time and purpose of the meeting;

(c) shall be posted up in at least six conspicuous places in the proposed Board area;

(d) shall be sent by registered mail to the Minister; and

(e) may be published in a newspaper having general circulation in the proposed area,

and the day named in the notice shall be at least fourteen days from the date of the last posting or mailing, whichever occurs later.

Meeting

(5) The meeting shall take place at the time and place set forth in the notice, and the person named to call the meeting shall preside at the meeting as chairman, but, if he is absent or declines to act, the inhabitants who are present at the meeting shall elect one of their number to act as chairman.

Recording
secretary

(6) The chairman shall appoint from among the inhabitants present a recording secretary who shall,

(a) record the proceedings of the meeting;

(b) post up copies of the record of the proceedings in at least six conspicuous places in the proposed Board area; and

(c) shall send a signed copy of the record of the proceedings, including the recommendations agreed upon by the meeting under subsection (8), by registered mail to the Minister.

Voting

(7) Any recommendation or other matter to be determined at the meeting shall be determined by a vote of the majority of the inhabitants present and voting, and the chairman shall decide how the voting shall be conducted.

Recommendations

(8) The inhabitants shall make recommendations to the Minister in respect of,

(a) the desirability of establishing a Local Services Board;

- (b) the boundaries of the Board area;
- (c) the name of the Board;
- (d) whether the number of Board members should be three or five;
- (e) the powers, chosen from those set out in the Schedule hereto, which the Board should have; and
- (f) such other matters as the inhabitants consider appropriate.

(9) The recommended boundaries of the proposed Board area shall not include a greater area than the area described in the notice calling the meeting. 1979, c. 82, s. 3. Boundaries

4. Where the Minister receives the recommendations made under section 3, the Minister may, by order, Powers of Minister

- (a) establish a Local Services Board under the name of "The Local Services Board of";
- (b) establish the boundaries of the Board area;
- (c) establish the number of Board members;
- (d) establish the term of office of the first Board;
- (e) designate the powers from those listed in the Schedule hereto that the Board may exercise;
- (f) provide for all matters necessary to conduct the election for the first Board members; and
- (g) provide for such other matters as the Minister considers appropriate. 1979, c. 82, s. 4.

5. Except as may be provided for by order of the Minister made under section 4, the term of office of a Board member shall be for one year from the 1st day of October in any year to the 30th day of September in the next year. 1979, c. 82, s. 5. Term of office

6.—(1) A Board is a corporation but the *Corporations Act* does not apply to the Board. Board is corporation
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c. 95

(2) A Board is not a municipality or a local board for the purposes of any Act. 1979, c. 82, s. 6. Board not municipality
or local board

Powers

7.—(1) A Board may exercise the powers designated in the order of the Minister and in the exercise of those powers may do all things and make all arrangements necessary to provide, maintain and improve services in the Board area.

Areas

(2) Where, in the exercise of its powers, a Board provides a service, the Board may,

(a) provide the service to the whole of the Board area or to one or more parts of the Board area designated by the Board; or

(b) provide a different level of the service to different designated parts of the Board area,

provided that no fee shall be charged and no levy shall be imposed in respect of a service or a level of service in any part of the Board area in which the service or the level of service is not provided.

Review

(3) A Board may at any time apply to the Minister for a review of the powers being exercised by the Board.

Committees

(4) A Board may appoint such committees to advise it in the conduct of its affairs as the Board considers appropriate.

Insurance

(5) A Board shall, by by-law, contract for insurance against risks that may involve pecuniary loss or liability on the part of the Board and provide for the payment of premiums therefor.

Limitation
on actions

(6) No action shall be brought against a Board or any member of a Board for damage caused by any failure by the Board to exercise any of its powers or to provide any service.

Assignment
of
contracts
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c. 95

(7) A Board may by by-law accept the assignment of any contract or agreement entered into by a corporation incorporated under Part III of the *Corporations Act* where the subject-matter of the contract or agreement is consistent with the powers of the Board. 1979, c. 82, s. 7.

Acquisition
of land

8. In the exercise of its powers, a Board may acquire land by purchase or lease for its purposes and, when the land is no longer required for the purposes of the Board, dispose of it. 1979, c. 82, s. 8.

Chairman head
of Board

9.—(1) The chairman is the head of the Board and shall preside at all meetings of the Board.

Absence,
etc., of
chairman

(2) In the absence of the chairman, or if his office is vacant, or if he refuses to act, the Board may, from among its members, appoint an acting chairman who, during such absence, vacancy or refusal to act, shall act in the place of the chairman and preside at the meetings of the Board.

(3) If a member of the Board ceases to be an inhabitant, fails to attend any three consecutive meetings of the Board, refuses to act or dies, the remaining Board members may by by-law call a public meeting to elect an inhabitant of the Board area to serve for the remainder of the term of such member and the provisions of subsections 19 (2), (3), (6) and (7) apply. 1979, c. 82, s. 9.

Failure to attend meetings, etc.

10.—(1) A majority of members of the Board constitutes a quorum.

Quorum

(2) The concurrent vote of the majority of the whole number of Board members is necessary to pass any by-law or approve any measure.

Voting

(3) All meetings of the Board shall be open to the public. 1979, c. 82, s. 10.

Meetings open

11. Subject to the provisions of this Act, the Board shall by by-law establish its own procedures. 1979, c. 82, s. 11.

Procedures

12.—(1) All by-laws of the Board shall be under seal.

Seal

(2) The Board shall by by-law authorize the secretary and one or more members of the Board to be signing officers on behalf of the Board. 1979, c. 82, s. 12.

Signing officers

13. A Board member shall not be paid any remuneration for the performance of his duties as a Board member. 1979, c. 82, s. 13.

No remuneration

14.—(1) The Board shall appoint a secretary,

Secretary

(a) who may be a member of the Board other than the chairman; and

(b) who shall hold office at the pleasure of the Board.

(2) The secretary before entering on the duties of office shall give security in a form and on such terms as the Minister may approve for the faithful performance of such duties and for duly accounting for and paying over all moneys that come into his hands.

Security

(3) The premiums in respect of the security shall be paid by the Board.

Premiums

(4) In addition to the other duties prescribed by this Act, the secretary shall,

Duties

(a) attend all meetings of the Board;

(b) keep minutes of such meetings;

- (c) ensure that copies of the minutes of meetings are posted up in at least six conspicuous places;
- (d) post up notices of meetings called by the Board;
- (e) carry on correspondence as directed by the Board;
- (f) receive and safely keep all moneys paid to the Board;
- (g) maintain books of account and other records as may be required by the Board or by the Minister; and
- (h) perform such other duties as the Board may assign. 1979, c. 82, s. 14.

Honorarium

15. The Board may pay to the secretary such honorarium as the Board by by-law determines. 1979, c. 82, s. 15.

Public meetings

16. A Board shall conduct sufficient public meetings so that the inhabitants may,

- (a) participate in a discussion of the current and proposed programs of the Board;
- (b) participate in the preparation of the annual estimates of the Board; and
- (c) participate in a discussion of the annual audit report. 1979, c. 82, s. 16.

Notice

17. A notice of a public meeting other than a meeting called under section 3 or 19 shall contain the place, date, time and purpose of the meeting, the signature of the secretary or the person or persons calling the meeting, and copies of the notice shall be posted up in at least six conspicuous places in the Board area at least one week in advance of the meeting. 1979, c. 82, s. 17.

Improper conduct

18. The chairman may expel or exclude from any meeting any person including a Board member for improper conduct at the meeting. 1979, c. 82, s. 18.

Election meeting

19.—(1) In each year, the Board shall call an election meeting of the inhabitants to be held in the Board area after the 1st day of August and before the 30th day of September for the purpose of electing a new Board.

Notice

(2) At least two weeks before the election meeting, the secretary shall post up notice of the place, date and time of the election meeting in at least six conspicuous places in the Board area and shall send a copy of the notice by registered mail to the Minister.

(3) The chairman of the Board shall act as chairman of the election meeting. Chairman

(4) If the Board fails to call an election meeting before the 10th day of September, the secretary shall immediately call such a meeting by giving notice as provided in subsection (2) and shall act as the chairman of the meeting notwithstanding that the chairman of the Board attends the meeting. Failure to call meeting

(5) If in any year both the Board and the secretary fail to call an election meeting before the 15th day of September, any ten inhabitants may call a meeting and may appoint one of their number to act as chairman of the meeting and such inhabitant shall act as chairman notwithstanding that the chairman of the Board attends the meeting. Idem

(6) Any inhabitant is eligible to be elected as a member of the Board. Qualifications

(7) For all elections after the first election, the Board shall, subject to subsection (8), determine all matters relating to the conduct of elections. Conduct of elections

(8) Voting for the election of members of the Board shall be by way of secret ballot. 1979, c. 82, s. 19. Voting

20. Where the eligibility of any inhabitant to vote or to seek office is challenged, the chairman shall require that the inhabitant whose eligibility has been challenged swear an affidavit before him in Form 2 and, where the inhabitant swears such affidavit, he may thereupon vote at the meeting or be eligible to seek office. 1979, c. 82, s. 20. Challenge to eligibility

21. The Board shall hold its first meeting after the election meeting not later than the 10th day of October, and at such meeting shall elect one of its members as chairman. 1979, c. 82, s. 21. First meeting

22. On or before the 15th day of October in each year, the Minister of Revenue shall cause to be sent to the secretary of every Board a copy of that portion of the Provincial Land Tax Register showing the lands in the Board area liable to assessment and taxation under the *Provincial Land Tax Act* and the amount of the assessment. 1979, c. 82, s. 22. Provincial Land Tax Register
R.S.O. 1980, c. 399

23.—(1) Before the 1st day of December in each year, the Board shall prepare and, after public discussion, adopt annual estimates of all amounts required for the purposes of the Board for operating and capital expenditures for the current fiscal year. Annual estimates

(2) In preparing the estimates, the Board shall take into account any surplus from the previous year that will be available Matters to be taken into account

in the current year, any operating deficit from the previous year and any debt owing to the Crown payable in the current year.

Contents of
estimates

- (3) The estimates shall set out,
- (a) the amounts to be raised;
 - (b) the manner in which the amounts are to be raised; and
 - (c) the rate or rates, if any, which the Board proposes be added to the provincial land tax in the whole or any part of the Board area.

When rates
to be added
under
R.S.O. 1980,
c. 399

(4) No rate shall be imposed under the *Provincial Land Tax Act* for the purposes of the Board, unless the rate, the purpose for which it is to be levied, and the area in which the rate is to be levied, are approved by a majority vote of the inhabitants present and voting at a meeting called for that purpose.

Copy to
Minister

(5) Before the 10th day of December in each year, the secretary shall send a copy of the estimates and the by-law adopting the estimates to the Minister by registered mail. 1979, c. 82, s. 23.

Payment
to Board

24.—(1) The Minister shall pay to the Board annually out of moneys appropriated therefor by the Legislature such amount as he considers appropriate after taking into account the estimates of the Board, the moneys paid to the Board by the Minister of Revenue under section 26, the fees collected by the Board for the supply of services or the use of facilities and such other amounts as by the initiatives of the inhabitants have been raised and granted to the Board.

Idem

(2) The Minister may pay to the Board annually out of moneys appropriated therefor by the Legislature an amount equal to twice the amount that the rate or rates levied under section 26 would produce if levied in respect of the improved Crown land within the Board area. 1979, c. 82, s. 24.

Rates under
R.S.O. 1980,
c. 399

25.—(1) Where in any year the inhabitants have approved a rate or rates to be levied under the *Provincial Land Tax Act* as provided for in section 23, the Board may by by-law passed before the 1st day of December in that year request the Minister of Revenue to levy and collect under that Act in the next ensuing calendar year, such rate or rates in respect of properties taxable under the *Provincial Land Tax Act*.

Copy of
by-law to
Minister
of Revenue

(2) The secretary shall send a copy of the by-law passed under subsection (1) to the Minister of Revenue by registered mail immediately after the passing of the by-law. 1979, c. 82, s. 25.

Levy under
R.S.O. 1980,
c. 399

26.—(1) Where the Minister of Revenue receives a by-law passed under subsection 25 (1), he shall levy in the

calendar year for which the by-law was passed the rate or rates set out in the by-law in respect of the property taxable under the *Provincial Land Tax Act* in the whole or such part of the Board area to which the rate or rates apply, and such rate or rates and the amounts imposed are deemed to be a tax and shall be shown on the tax bill for such property as "Taxes for the purposes of The Local Services Board of . . . (naming the Board)", and shall be collected as though it were for all purposes provincial land tax.

R.S.O. 1980,
c. 399

(2) Notwithstanding section 3 of the *Provincial Land Tax Act*, land belonging to the Board is exempt from taxation under the *Provincial Land Tax Act*.

Exemption

(3) The Minister of Revenue shall pay to the Board the amounts collected under subsection (1). 1979, c. 82, s. 26.

Payment
to Board

27. The Board may by by-law establish such reserves from its revenues as the Board considers appropriate for expenditure in a subsequent fiscal year or years. 1979, c. 82, s. 27.

Reserves

28. A Board may incur a debt for the purposes of the Board but shall not incur any debt the payment of which is not provided for in the estimates for the current fiscal year of the Board unless,

Debt

(a) it is a debt owed to the Crown in right of Ontario; or

(b) the purpose for which the debt is to be incurred and the amount thereof is approved by a majority vote of the inhabitants present and voting at a meeting called for that purpose and the approval of the Minister to the incurring of the debt is obtained. 1979, c. 82, s. 28.

29.—(1) A Board shall engage a public accountant licensed as a municipal auditor under the *Municipal Affairs Act* to audit its accounts and transactions and to make a report to it annually or more often as the board requires.

Audit
R.S.O. 1980,
c. 303

(2) The fiscal year of a Board is the year commencing on the 1st day of October and expiring with the 30th day of September next following.

Fiscal
year

(3) The secretary shall send a copy of the annual audit report by registered mail to the Minister.

Copy of
report to
Minister

(4) The secretary shall permit any inhabitant at any reasonable time to examine and copy the audit report.

Examina-
tion of
report

(5) The Minister may at any time cause the accounts and transactions of a Board to be audited. 1979, c. 82, s. 29.

Audit
required by
Minister

Minister
may
dissolve
Board

30. Where the Minister determines that a Board is misusing its funds or is not administering its affairs in a proper and straightforward manner or cannot or is unlikely to be able to meet its obligations as they fall due, the Minister may by order,

- (a) dissolve the Board and call a new election;
- (b) dissolve the Board and assume the powers of the Board; or
- (c) dissolve the Board and the Board area and subsection 32 (3) applies to the order. 1979, c. 82, s. 30.

Proposal
to alter
boundaries
or vary
powers

31.—(1) Where a Board considers it desirable that the boundaries of the Board area be altered or the powers of the Board be varied, the Board shall put the proposal to a vote of the inhabitants at a meeting called for that purpose, and the notice of such meeting shall outline the proposal.

Notice

(2) Where it is proposed that the Board area be enlarged, the secretary shall post within the area proposed to be added the notice mentioned in subsection (1) and inhabitants in the area proposed to be added may attend the meeting and vote upon the proposal.

Recording
of vote

(3) Where it is proposed that the boundaries of a Board area be altered, the secretary shall record separately the vote of the inhabitants within the area that it is proposed to be added to, or to be removed from, the Board area.

Powers of
Minister

(4) Where a majority of the inhabitants present at the meeting vote in favour of a proposal made under subsection (1), the secretary shall forward to the Minister,

- (a) a copy of the proposal as approved at the meeting;
- (b) a statement of the results of the vote showing the vote of the inhabitants for and against the proposal; and
- (c) where it is proposed that the boundaries of the Board be altered, a statement of the vote of the inhabitants of the area it is proposed be added to or removed from the Board area,

and the Minister may make such order as he considers appropriate. 1979, c. 82, s. 31.

Proposal to
dissolve
Board

32.—(1) Where a board or any ten inhabitants propose that the Board be dissolved, the proposal shall be put to a vote of the

inhabitants at a meeting called for that purpose, and the notice of such meeting shall outline the proposal.

(2) Where the majority of inhabitants present at the meeting approve a proposal that the Board be dissolved, the secretary shall send to the Minister a copy of the proposal together with a statement of the vote for and against the proposal, and the Minister, if he considers it appropriate, may by order dissolve the Board and the Board area. Powers of Minister

(3) In an order for dissolution, the Minister may make such provisions with respect to the transfer of liabilities and assets of the Board as he considers appropriate. 1979, c. 82, s. 32. Transfer of assets and liabilities

33. The Minister may by order prescribe a French language version of any form that is prescribed by this Act and provide for its use. 1979, c. 82, s. 33. Forms in French language

34. The Lieutenant Governor in Council may make regulations amending the Schedule hereto. 1979, c. 82, s. 34. Regulations

SCHEDULE

1. WATER SUPPLY

The Board may, by by-law,

(a) acquire, establish, operate and maintain works for; or

(b) contract for,

a supply of water and for that purpose may regulate the time, manner, extent and nature of such supply and the persons to whom water may be supplied, and may charge a fee for the cost of such supply.

2. FIRE PROTECTION

The Board may, by by-law,

(a) acquire, establish, operate and maintain a fire-hall, fire engines and apparatus and equipment for fire fighting and fire protection; or

(b) contract for fire protection,

and may charge a fee for the cost of such service.

3. GARBAGE COLLECTION

The Board may, by by-law,

(a) establish and maintain a system for the collection and removal of garbage; or

(b) contract for the collection, removal and disposal of garbage,

and for that purpose may regulate the occasions, manner, extent and nature of such service and the persons to whom such service may be supplied, and may charge a fee for the cost of such service.

4. SEWAGE

The Board may, by by-law,

(a) acquire, establish, operate and maintain sewage works, including sewers, pumping plants, treatment works and other like works necessary for a sewage collection and treatment system; or

(b) contract for the collection and treatment of sewage,

and for such purposes may charge a fee for such service or add a surcharge to the fee, if any, for water supply, or,

(c) upon such terms and conditions as the Board considers appropriate and with the approval of a majority of the inhabitants at a meeting called for that purpose, financially assist by grant or loan the installation of private septic tank systems or other systems approved by the Ministry of the Environment for the benefit of any inhabitant or inhabitants.

5. STREET OR AREA LIGHTING

The Board may, by by-law,

- (a) contract with Ontario Hydro or any person for the provision of street or area lighting in the Board area; or
- (b) contract with Ontario Hydro or any person for the provision of power and acquire by purchase or lease lights, light standards and lighting equipment in order to provide street or area lighting in the Board area,

and may charge a fee for the cost of such service, but no Board shall generate its own power.

6. RECREATION

The Board may, by by-law,

- (a) contract for the use of recreation facilities or participation in programs of recreation;
- (b) provide for the carrying out of programs of recreation; or
- (c) acquire, establish, construct, operate and maintain recreation facilities,

and may charge fees in respect of the programs of recreation or the recreation facilities, and the Board shall be deemed to be an approved corporation for the purposes of the *Community Recreation Centres Act*.

1979, c. 82, Sched.

FORM 1

NOTICE OF MEETING

TAKE NOTICE that a meeting will be held to consider the desirability of establishing a Local Services Board in thearea.

The proposed Board area to be considered at the meeting is _____

(describe boundaries of proposed Board area or attach a

drawing or map depicting the proposed Board area).

The meeting will take place:

at _____
(time)

on _____
(day)

in _____
(place)

Date of Notice:

Signature of Person
calling the meeting _____

FORM 2

AFFIDAVIT OF ELIGIBILITY TO VOTE

I, _____, of
(print name)

_____ make oath and say as follows:

1. I am a Canadian Citizen;
2. I am of the full age of eighteen years;
- (complete either 3 or 4)

If person
making
affidavit
is a
permanent
resident

3. I do permanently reside at _____
- _____
- (a brief description of the property's location)
- in the Board area.

OR

If person
making
affidavit
is not a
permanent
resident
but owns
property
within the
Board Area

4. I am the owner of _____
- (legal description, or if unavailable,
- _____
- a brief description of property's location)
- located in the Board area.

And I do verily believe that I am an inhabitant as defined by clause 1 (c) of the
Local Services Boards Act.

Sworn before me in the
District of
in the Province of Ontario,
this day of , 19 .

Signature of person
making affidavit

Chairman,
the Local Services Board of

(Name of Local Services Board)

CHAPTER 253

Lord's Day (Ontario) Act

1.—(1) Where a by-law passed under this section is in force and subject to its provisions, it is lawful in the municipality or in such part or parts thereof as are specified in the by-law for any person, after 1.30 o'clock in the afternoon of the Lord's Day or during such period or periods of time after 1.30 o'clock in the afternoon of the Lord's Day as are specified in the by-law, to provide, engage in or be present at any public game or sport that is specified in the by-law and which but for this Act would be unlawful under section 6 of the *Lord's Day Act* (Canada), or to do or engage any other person to do any work, business or labour in connection with any such public game or sport which but for this Act would be unlawful under section 4 of the *Lord's Day Act* (Canada). Sunday sports may be made lawful
R.S.C. 1970, c. L-13

(2) The council of any city, town, village or township may pass a by-law, Implementing by-law authorized

(a) providing that subsection (1) applies in the municipality or specifying a part or parts of the municipality in which subsection (1) applies;

(b) providing that subsection (1) applies after 1.30 o'clock in the afternoon of the Lord's Day or specifying the period or periods of time after 1.30 o'clock in the afternoon of the Lord's Day during which subsection (1) applies; and

(c) specifying the public games and sports to which subsection (1) applies.

(3) Any provision of a by-law under this section may differ in different parts of the municipality and with respect to different public games and sports. Variation in by-law authorized

(4) A by-law under this section shall not specify horseracing as a public game or sport. Horse-racing R.S.O. 1970, c. 259, s. 1.

2.—(1) In this section, "municipality" means a city, town, village or township and includes a metropolitan municipality but does not include a local municipality in a metropolitan municipality. Municipality defined

By-laws
authorized

(2) The council of a municipality may pass a by-law providing that this section applies in the municipality.

Horse-
racing

R.S.C. 1970,
c. L-13

(3) In every municipality in which a by-law passed under subsection (2) is in force, it is lawful for any person after 1.30 o'clock in the afternoon on the Lord's Day to provide, engage in or be present at a horse race that, but for this Act, would be unlawful under section 6 of the *Lord's Day Act* (Canada), or to do or engage any other person to do any work, business or labour in connection with any such horse race which, but for this Act, would be unlawful under section 4 or 6 of the *Lord's Day Act* (Canada). R.S.O. 1970, c. 259, s. 2.

Sunday
movies, etc.,
may be
made lawful

3.—(1) Where a by-law passed under this section is in force and subject to its provisions, it is lawful in the municipality or in such part or parts thereof as are specified in the by-law for any person, after 1.30 o'clock in the afternoon of the Lord's Day or during such period or periods of time after 1.30 o'clock in the afternoon of the Lord's Day as are specified in the by-law, to provide, engage in or be present at any exhibition of moving pictures or any theatrical performance, any concert or any lecture or such of them as are specified in the by-law and which but for this Act would be unlawful under section 6 of the *Lord's Day Act* (Canada), or to do or engage any other person to do any work, business or labour in connection with any such exhibition of moving pictures, theatrical performance, concert or lecture, as the case may be, which but for this Act would be unlawful under section 4 of the *Lord's Day Act* (Canada).

Implement-
ing by-law
authorized

(2) The council of any city, town, village or township may pass a by-law,

- (a) providing that subsection (1) applies in the municipality or specifying a part or parts of the municipality in which subsection (1) applies;
- (b) providing that subsection (1) applies after 1.30 o'clock in the afternoon of the Lord's Day or specifying the period or periods of time after 1.30 o'clock in the afternoon of the Lord's Day during which subsection (1) applies; and
- (c) specifying that subsection (1) applies to the exhibition of moving pictures, theatrical performances, concerts and lectures or any one or more of them.

Variation
in by-law
authorized

(3) Any provision of a by-law under this section may differ in different parts of the municipality and in respect of the exhibition of moving pictures, theatrical performances, concerts or lectures.

(4) The expression "concert" in this section does not include a concert of an artistic and cultural nature that is governed by section 5. R.S.O. 1970, c. 259, s. 3. "Concert"
defined

4.—(1) Every by-law under this Act shall provide for the regulation and control of the activities specified therein, and may provide for the regulation and control of any matter or thing in connection therewith. Regulation
and control

(2) Part XIX of the *Municipal Act* applies to by-laws passed under subsection (1). R.S.O. 1970, c. 259, s. 4. Application
of R.S.O.
1980,
c. 302

5. It is lawful for any person after 1.30 o'clock in the afternoon of the Lord's Day to provide, engage in or be present at any concert, recital or other musical performance of an artistic and cultural nature produced by a non-profit organization at which an admission fee is charged and which but for this Act would be unlawful under section 6 of the *Lord's Day Act* (Canada), or to do or engage any other person to do any work, business or labour in connection with any such concert, recital or other musical performance which but for this Act would be unlawful under section 4 of the *Lord's Day Act* (Canada). R.S.O. 1970, c. 259, s. 5. Sunday
musical
concerts
lawful

R.S.C. 1970,
c. L-13

6.—(1) In this section, "municipality" means a city, town, village or township and includes a metropolitan municipality but does not include a local municipality in a metropolitan municipality. Municipality
defined

(2) The council of a municipality may pass a by-law providing that this section applies in the municipality in respect of such exhibitions or shows referred to in clause (3) (a) and such activities referred to in clause (3) (b) as are specified in the by-law. R.S.O. 1970, c. 259, s. 6 (1, 2). By-laws
authorized

(3) In every municipality in which a by-law passed under subsection (2) is in force, it is lawful for any person after 12.00 o'clock noon on the Lord's Day to provide, engage in or be present at, Agricul-
tural,
horticul-
tural or trade
exhibitions
or shows

(a) any exhibition or show that is conducted by any society or association to which the *Agricultural Associations Act*, the *Agricultural Societies Act* or the *Horticultural Societies Act* applies or by any corporation incorporated without share capital by or under any special or general Act or at any trade show or scientific exhibition; and R.S.O. 1980,
cc. 8, 14,
204

(b) any activity provided or arranged for by such association, society or corporation in connection therewith,

specified in the by-law and that, but for this Act, would be unlawful under section 4, 6 or 7 of the *Lord's Day Act* (Canada), or to do or employ any other person to do any work, business or labour in connection with any such exhibition, show or activity that, but for this Act, would be unlawful under section 4, 6 or 7 of the *Lord's Day Act* (Canada). R.S.O. 1970, c. 259, s. 6 (3); 1974, c. 68, s. 1.

When
daylight
saving time
in effect

7. If and so long as the time commonly observed in a municipality in which a by-law under this Act is in force or in which a concert, recital or other musical performance is produced under section 5 is one hour in advance of standard time, the times mentioned in this Act or in a by-law under this Act shall be reckoned in accordance with the time so commonly observed and not standard time. R.S.O. 1970, c. 259, s. 7.

Subject to
R.S.O. 1980,
cc. 498, 429

8. This Act and any by-law passed thereunder are subject to the *Theatres Act* and the *Racing Commission Act* and to the regulations made thereunder. R.S.O. 1970, c. 259, s. 8.

Sunday
sports
by-laws
heretofore
passed

9. Any by-law passed under the authority of a predecessor of this Act shall be deemed to have been passed under the authority of this Act. R.S.O. 1970, c. 259, s. 9. .

CHAPTER 254

Management Board of Cabinet Act

1.—(1) In this Act,Interpre-
tation

- (a) “Board” means the Management Board of Cabinet;
- (b) “Chairman” means the member of the Executive Council appointed as Chairman of the Board by the Lieutenant Governor;
- (c) “ministry” means a ministry of the Government of Ontario and includes a board, commission, authority, corporation or other agency of the Government of Ontario;
- (d) “public service” means all ministries or any part thereof;
- (e) “secretariat” means the staff of the Board reporting to the Board through the Secretary;
- (f) “Secretary” means the Secretary of the Board;
- (g) “Vice-Chairman” means the member of the Executive Council who by order in council is appointed the Vice-Chairman of the Board.

(2) Except as otherwise provided in this Act, section 1 of the *Financial Administration Act* applies to this Act. 1971 (2nd Sess.), c. 12, s. 1; 1972, c. 1, s. 2.

Idem
R.S.O. 1980,
c. 161

2.—(1) The Management Board of Cabinet is continued and shall consist of the Chairman, the Vice-Chairman and not fewer than four and not more than six other members of the Executive Council designated from time to time by the Lieutenant Governor in Council.

Composition
of Board

(2) The Lieutenant Governor in Council may designate other ministers to serve as alternates in the absence of members of the Board.

Alternate
members

(3) The Chairman shall preside at meetings of the Board and is responsible for the operation and administration of the Board and the secretariat.

Chairman's
powers and
duties

**Absence of
Chairman**

(4) When the Chairman is absent from any meeting, the Vice-Chairman shall preside at the meeting and, when both the Chairman and Vice-Chairman are absent, the members present at a meeting shall appoint a member to preside at the meeting.

Secretary

(5) The Lieutenant Governor in Council shall appoint an officer, to be known as the Secretary of the Management Board of Cabinet, who shall perform such functions as the Board may assign to him, and the Secretary of the Management Board of Cabinet shall rank as and have all the powers and duties of a deputy minister of a ministry.

**Officers and
employees**

(6) Such other officers and employees as are necessary for the proper conduct of the business of the Board shall be appointed under the *Public Service Act*.

R.S.O. 1980,
c. 418

Procedure

(7) The Board may determine its rules and methods of procedure and shall keep a minute book in which shall be recorded the proceedings of the Board.

Quorum

(8) Three members of the Board constitute a quorum. 1971 (2nd Sess.), c. 12, s. 2; 1972, c. 1, s. 2.

**Duties of
Board**

3.—(1) The Board shall be a committee of the Executive Council with the following powers and duties:

- (a) to co-ordinate the implementation of programs sanctioned or provided for by the Legislature;
- (b) to direct the preparation and review of forecasts, estimates and analyses of revenues, expenditures, commitments and other data pertaining to authorized or proposed programs and to assess the results thereof;
- (c) to control expenditures of public money within the amounts appropriated or otherwise provided for by the Legislature;
- (d) to approve organization and staff establishments in the public service;
- (e) to establish, prescribe or regulate such administrative policies and procedures as the Board considers necessary for the efficient and effective operation of the public service generally;
- (f) to initiate and supervise the development of management practices and systems for the efficient operation of the public service; and

- (g) to report to the Executive Council on any other matter concerning general administrative policy in the public service that is referred to it by the Executive Council or on which the Board considers it desirable to report to the Executive Council.

(2) The Board may require from any public officer or any agent of the Crown any account, return, statement, document, report or information that the Board considers necessary for the performance of its duties. Board may require production of documents

(3) The Board may issue such administrative directives as it considers necessary in the performance of its duties. Administrative directives

(4) The Board may undertake or order such studies and examinations of the operation and administration of any part of the public service as the Board considers necessary for the performance of the duties of the Board. Studies

(5) The Board in the exercise of its powers and duties under this or any other Act is subject to the direction of the Executive Council which may amend or revoke any action of the Board. 1971 (2nd Sess.), c. 12, s. 3. Board subject to direction of Executive Council

4.—(1) Where an accident happens to any public work or building when the Legislature is not in session and an expenditure for the repair or renewal thereof is urgently required, or where any other matter arises when the Legislature is not in session in respect of which an expenditure not foreseen or provided for by the Legislature is urgently required for the public good, the Board shall estimate the amount to be required for such expenditure and the Lieutenant Governor in Council upon the report of the Treasurer of Ontario that there is no appropriation for the expenditure and upon the report of the Board stating its estimate and upon the recommendation of the minister of the ministry concerned that the expenditure is urgently required, may order a special warrant to be prepared to be signed by the Lieutenant Governor authorizing the payment of the amount estimated to be required for such expenditure. Special warrants

(2) A warrant issued under this section shall be deemed to be an appropriation for the fiscal year in which it is issued. 1971 (2nd Sess.), c. 12, s. 4; 1972, c. 1, s. 2. Warrant an appropriation

5. Where an appropriation is exhausted or a sufficient amount was not provided and the public interest or the urgent requirements of the public service necessitate further payments, the Board, upon the report of the minister of the ministry concerned as to the necessity for further Board orders

payments and stating the reason why the appropriation is insufficient and the amount estimated to be required, may make an order authorizing payments to be made against such amount as it considers proper. 1971 (2nd Sess.), c. 12, s. 5; 1972, c. 1, s. 2.

Regulations

6. Subject to the approval of the Lieutenant Governor in Council, the Board may make regulations,

- (a) respecting the collection, management and administration of, and accounting for, public money;
- (b) respecting the retention and disposal of records;
- (c) fixing the scale of allowances for travelling and living expenses to be allowed to any person employed in or in connection with any part of the public service, except those allowances which have been determined by bargaining under the *Crown Employees Collective Bargaining Act*;
- (d) for any purpose necessary for the efficient administration of the public service. 1971 (2nd Sess.), c. 12, s. 6 (1); 1972, c. 97, s. 1.

R.S.O. 1980,
c. 108

Chairman to
be minister
of ministry
R.S.O. 1980,
c. 147

7. For the purposes of the *Executive Council Act*, the Chairman of the Board is a minister having charge of a ministry. 1971 (2nd Sess.), c. 12, s. 7; 1972, c. 1, s. 2.

CHAPTER 255

Marine Insurance Act

INTERPRETATION

1. In this Act, unless the context otherwise requires,

**Interpre-
tation**

- (a) “action” includes a counterclaim and a set-off;
- (b) “freight” includes the profit derivable by a ship-owner from the employment of his ship to carry his own goods or movables, as well as freight payable by a third party, but does not include passage-money;
- (c) “movables” means any movable tangible property, other than the ship, and includes money, valuable securities and other documents;
- (d) “policy” means a marine policy. R.S.O. 1970, c. 260, s. 1.

2. A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure. R.S.O. 1970, c. 260, s. 2.

**Marine
insurance
defined**

3.—(1) A contract of marine insurance may, by its express terms or usage of the trade, be written so as to protect the assured against losses on inland waters, or may be extended so as to protect the assured against losses on any land or air risk that may be incidental to any sea or inland water voyage. 1972, c. 40, s. 1.

**Mixed sea,
land and
air risks**

(2) Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, apply thereto; but, except as provided by this section, nothing in this Act alters or affects any rule of law applicable to any contract of insurance other than a contract of marine insurance as defined by this Act. R.S.O. 1970, c. 260, s. 3 (2).

**Where Act
applies**

4.—(1) Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance.

**Marine
adventure
subject of
contract**

Marine
adventures
defined

(2) In particular there is a marine adventure where,

- (a) any ship, goods, or other movables are exposed to maritime perils and such property is in this Act referred to as “insurable property”;
- (b) the earning or acquisition of any freight, passage-money, commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to maritime perils;
- (c) any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property by reason of maritime perils.

Maritime
perils
defined

(3) “Maritime perils” means the perils consequent on or incidental to the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detentions of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy. R.S.O. 1970, c. 260, s. 4.

INSURABLE INTEREST

Wagering
or gaming
contracts
void

5.—(1) Every contract of marine insurance by way of gaming or wagering is void.

What
contracts of
marine
insurance
deemed void

(2) A contract of marine insurance is deemed to be a gaming or wagering contract,

- (a) where the assured has not an insurable interest as defined by this Act, and the contract is entered into with no expectation of acquiring such an interest; or
- (b) where the policy is made “interest or no interest”, or “without further proof of interest than the policy itself”, or “without benefit of salvage to the insurer”, or subject to any other like term,

provided that where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer. R.S.O. 1970, c. 260, s. 5.

Insurable
interest,

6.—(1) Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure.

defined

(2) In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in

consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss or by damage thereto or by the detention thereof, or may incur liability in respect thereof. R.S.O. 1970, c. 260, s. 6.

7.—(1) The assured must be interested in the subject-matter insured at the time of the loss though he need not be interested when the insurance is effected; provided that, where the subject-matter is insured “lost or not lost”, the assured may recover although he may not have acquired his interest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss and the insurer was not. When interest must attach

(2) Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss. R.S.O. 1970, c. 260, s. 7. Where no interest

8.—(1) A defeasible interest and a contingent interest are insurable. Defeasible or contingent interests

(2) In particular, where the buyer of goods has insured them, he has an insurable interest, notwithstanding that he might, at his election, have rejected the goods, or have treated them as at the seller’s risk, by reason of the latter’s delay in making delivery or otherwise. R.S.O. 1970, c. 260, s. 8. Buyer of goods

9. A partial interest of any nature is insurable. R.S.O. 1970, c. 260, s. 9. Partial interest

10.—(1) The insurer under a contract of marine insurance has an insurable interest in his risk and may reinsure in respect of it. Reinsurance

(2) Unless the policy otherwise provides, the original assured has no right or interest in respect of such reinsurance. R.S.O. 1970, c. 260, s. 10. Interest of original assured

11. The lender of money on bottomry or respondentia has an insurable interest in respect of the loan. R.S.O. 1970, c. 260, s. 11. Bottomry

12. The master or any member of the crew of a ship has an insurable interest in respect of his wages. R.S.O. 1970, c. 260, s. 12. Master’s and seamen’s wages

13. In the case of advance freight, the person advancing the freight has an insurable interest, in so far as such freight is not repayable in case of loss. R.S.O. 1970, c. 260, s. 13. Advance freight

Charges of insurance

14. The assured has an insurable interest in the charges of any insurance that he may effect. R.S.O. 1970, c. 260, s. 14.

Quantum of interest, mortgagor

15.—(1) Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage.

Mortgagee, consignee

(2) A mortgagee, consignee, or other person having an interest in the subject-matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit.

Owner

(3) The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss. R.S.O. 1970, c. 260, s. 15.

Assignment of interest

16. Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there is an express or implied agreement with the assignee to that effect; but the provisions of this section do not affect a transmission of interest by operation of law. R.S.O. 1970, c. 260, s. 16.

INSURABLE VALUE

Measure of insurable value

17. Subject to any express provision or valuation in the policy, the insurable value of the subject-matter insured must be ascertained as follows:

1. In insurance on ship, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages, and other disbursements, if any, incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole, and the insurable value, in the case of a steamship, includes also the machinery, boilers, and coals, oils, and engine stores if owned by the assured, and, in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade.
2. In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance.

3. In insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole.
4. In insurance on any other subject-matter, the insurable value is the amount at the risk of the assured when the policy attaches plus the charges of insurance. R.S.O. 1970, c. 260, s. 17.

DISCLOSURE AND REPRESENTATIONS

18. A contract of marine insurance is a contract based upon the utmost good faith, and if the utmost good faith is not observed by either party the contract may be avoided by the other party. R.S.O. 1970, c. 260, s. 18.

19.—(1) Subject to the provisions of this section, the assured must disclose to the insurer before the contract is concluded every material circumstance that is known to the assured, and the assured is deemed to know every circumstance that in the ordinary course of business ought to be known by him and if the assured fails to make such disclosure the insurer may avoid the contract.

(2) Every circumstance is material that would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk.

(3) In the absence of inquiry the following circumstances need not be disclosed,

- (a) any circumstance that diminishes the risk;
- (b) any circumstance that is known or presumed to be known to the insurer and the insurer is presumed to know matters of common notoriety or knowledge and matters that an insurer in the ordinary course of his business, as such, ought to know;
- (c) any circumstance as to which information is waived by the insurer;
- (d) any circumstance that it is superfluous to disclose by reason of any express or implied warranty.

(4) Whether any particular circumstance that is not disclosed be material or not is in each case a question of fact.

Circum-
stance
defined

(5) The term "circumstance" includes any communication made to or information received by the assured. R.S.O. 1970, c. 260, s. 19.

Disclosure
by agent
effecting
insurance

20. Subject to the provisions of section 19 as to circumstances that need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer,

- (a) every material circumstance that is known to himself, and an agent to insure is deemed to know every circumstance that in the ordinary course of business ought to be known by or to have been communicated to him; and
- (b) every material circumstance that the assured is bound to disclose, unless it comes to his knowledge too late to communicate it to the agent. R.S.O. 1970, c. 260, s. 20.

Representa-
tions
pending
negotiation
of contract,

21.—(1) Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true and if it be untrue the insurer may avoid the contract.

material

(2) A representation is material that would influence the judgment of a prudent insurer in fixing the premium or determining whether he will take the risk.

Fact,
expectation
or belief

(3) A representation may be either a representation as to a matter of fact or as to a matter of expectation or belief.

fact

(4) A representation as to a matter of fact is true if it is substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer.

expectation
or belief

(5) A representation as to a matter of expectation or belief is true if it is made in good faith.

withdrawal

(6) A representation may be withdrawn or corrected before the contract is concluded.

determina-
tion question
of fact

(7) Whether a particular representation be material or not is in each case a question of fact. R.S.O. 1970, c. 260, s. 21.

When
contract is
deemed to
be con-
cluded

22. A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy is then issued or not, and for the purpose of showing when the proposal was accepted,

reference may be made to the slip or covering note or other customary memorandum of the contract. R.S.O. 1970, c. 260, s. 22.

THE POLICY

23. A contract of marine insurance is inadmissible in evidence unless it is embodied in a marine policy in accordance with this Act and the policy may be executed and issued either at the time when the contract is concluded or afterwards. R.S.O. 1970, c. 260, s. 23.

Contract must be embodied in policy

24. A marine policy must specify,

What policy must specify

- (a) the name of the assured or of some person who effects the insurance on his behalf;
- (b) the subject-matter insured and the risk insured against;
- (c) the voyage or period of time, or both, as the case may be, covered by the insurance;
- (d) the sum or sums insured; and
- (e) the name or names of the insurers. R.S.O. 1970, c. 260, s. 24.

25.—(1) A marine policy must be signed by or on behalf of the insurer; provided that in the case of a corporation the corporate seal may be sufficient, but nothing in this section shall be construed as requiring the subscription of a corporation to be under seal.

Signature of insurer

(2) Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary is expressed, constitutes a distinct contract with the assured. R.S.O. 1970, c. 260, s. 25.

Subscription by two or more insurers

26. Where the contract is to insure the subject-matter at and from, or from one place to another or others, the policy is called a "voyage policy", and where the contract is to insure the subject-matter for a definite period of time the policy is called a "time policy" and a contract for both voyage and time may be included in the same policy. R.S.O. 1970, c. 260, s. 26.

Voyage and time policies

27.—(1) The subject-matter insured must be designated in a marine policy with reasonable certainty.

Designation of subject-matter

(2) The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy.

Nature and extent of interest

Designation
in general
terms

(3) Where the policy designates the subject-matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered.

Usage

(4) In the application of this section regard shall be had to any usage regulating the designation of the subject-matter insured. R.S.O. 1970, c. 260, s. 27.

Valued
policy or
unvalued

28.—(1) A policy may be either valued or unvalued.

Valued
policy

(2) A valued policy is a policy that specifies the agreed value of the subject-matter insured.

Value fixed

(3) Subject to the provisions of this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss is total or partial.

Idem

(4) Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss. R.S.O. 1970, c. 260, s. 28.

Unvalued
policy

29. An unvalued policy is a policy that does not specify the value of the subject-matter insured, but, subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained in the manner hereinbefore specified. R.S.O. 1970, c. 260, s. 29.

Floating
policy by
ship or
ships

30.—(1) A floating policy is a policy that describes the insurance in general terms and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration.

Declaration

(2) The subsequent declaration or declarations may be made by endorsement on the policy or in other customary manner.

Idem

(3) Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment and they must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith.

Idem

(4) Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration. R.S.O. 1970, c. 260, s. 30.

31.—(1) A policy may be in the form in the Schedule. Policy form

(2) Subject to the provisions of this Act, and unless the context of the policy otherwise requires, the terms and expressions mentioned in the Schedule shall be construed as having the scope and meaning in the Schedule assigned to them. Construction of terms in Schedule
R.S.O. 1970, c. 260, s. 31.

32.—(1) Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable. Premium to be arranged

(2) Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then a reasonable additional premium is payable. Additional premium
R.S.O. 1970, c. 260, s. 32.

DOUBLE INSURANCE

33.—(1) Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance. Double insurance,

(2) Where the assured is over-insured by double insurance, where over-insured

- (a) the assured, unless the policy otherwise provides, may claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Act;
- (b) where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation for any sum received by him under any other policy without regard to the actual value of the subject-matter insured;
- (c) where the policy under which the assured claims is an unvalued policy, he must give credit, as against the full insurable value, for any sum received by him under any other policy;
- (d) where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves. R.S.O. 1970, c. 260, s. 33.

WARRANTIES, ETC.

Warranty,
nature of

34.—(1) A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts.

express or
implied

(2) A warranty may be express or implied.

compliance
with

(3) A warranty as defined in subsection (1) is a condition that must be exactly complied with, whether it be material to the risk or not and if it is not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date. R.S.O. 1970, c. 260, s. 34.

When
breach of
warranty
excused

35.—(1) Non-compliance with a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law.

Where
warranty
broken

(2) Where a warranty is broken, the assured cannot avail himself of the defence that the breach has been remedied and the warranty complied with before loss.

Breach
waived

(3) A breach of warranty may be waived by the insurer. R.S.O. 1970, c. 260, s. 35.

Express
warranties,
form

36.—(1) An express warranty may be in any form of words from which the intention to warrant is to be inferred.

in policy

(2) An express warranty must be included in or written upon the policy or must be contained in some document incorporated by reference into the policy.

implied
warranty not
excluded

(3) An express warranty does not exclude an implied warranty unless it is inconsistent therewith. R.S.O. 1970, c. 260, s. 36.

Warranty of
neutrality

37.—(1) Where insurable property, whether ship or goods, is expressly warranted “neutral”, there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character shall be preserved during the risk.

(2) Where a ship is expressly warranted "neutral", there is ^{Idem} also an implied condition that, so far as the assured can control the matter, she shall be properly documented, that is to say, that she shall carry the necessary papers to establish her neutrality, and that she shall not falsify or suppress her papers or use simulated papers and if any loss occurs through breach of this condition, the insurer may avoid the contract. R.S.O. 1970, c. 260, s. 37.

38. There is no implied warranty as to the nationality of a ^{No implied warranty of nationality} ship, or that her nationality shall not be changed during the risk. R.S.O. 1970, c. 260, s. 38.

39. Where the subject-matter insured is warranted "well" ^{Warranty of good safety} or "in good safety" on a particular day, it is sufficient if it is safe at any time during the day. R.S.O. 1970, c. 260, s. 39.

40.—(1) In the voyage policy there is an implied warranty ^{Warranty of seaworthiness of ship} that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured.

(2) Where the policy attaches while the ship is in port, there is also an implied warranty ^{Implied warranty} that she shall at the commencement of the risk be reasonably fit to encounter the ordinary perils of the port.

(3) Where the policy relates to a voyage that is performed ^{Idem} in different stages during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage.

(4) A ship is deemed to be seaworthy when she is reasonably ^{When ship seaworthy} fit in all respects to encounter the ordinary perils of the seas of the adventure insured.

(5) In a time policy there is no implied warranty ^{No implied warranty in time policy} that the ship shall be seaworthy at any stage of the adventure but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness. R.S.O. 1970, c. 260, s. 40.

41.—(1) In a policy on goods or other movables there is no ^{No implied warranty that goods are seaworthy} implied warranty that the goods or movables are seaworthy.

(2) In a voyage policy on goods or other movables there is ^{Voyage policy on goods} an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship but also that she is reasonably fit to carry the goods or other movables to the destination contemplated by the policy. R.S.O. 1970, c. 260, s. 41.

Warranty
of legality

42. There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner. R.S.O. 1970, c. 260, s. 42.

THE VOYAGE

Implied
condition
as to com-
mencement
of risk

43.—(1) Where the subject-matter is insured by a voyage policy “at and from” or “from” a particular place, it is not necessary that the ship should be at that place when the contract is concluded, but there is an implied condition that the adventure shall be commenced within a reasonable time and that if the adventure is not so commenced the insurer may avoid the contract.

When
condition
may be
negatived

(2) The implied condition may be negatived by showing that the delay was caused by circumstances known to the insurer before the contract was concluded or by showing that he waived the condition. R.S.O. 1970, c. 260, s. 43.

Alteration
of port of
departure

44. Where the place of departure is specified by the policy and the ship, instead of sailing from that place, sails from any other place, the risk does not attach. R.S.O. 1970, c. 260, s. 44.

Sailing for
different
destination

45. Where the destination is specified in the policy and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach. R.S.O. 1970, c. 260, s. 45.

Change of
voyage

46.—(1) Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage.

Insurer
discharged
from time
of change

(2) Unless the policy otherwise provides, where there is a change of voyage, the insurer is discharged from liability as from the time of change, that is to say, as from the time when the determination to change it is manifested; and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs. R.S.O. 1970, c. 260, s. 46.

Deviation

47.—(1) Where a ship, without lawful excuse, deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation and it is immaterial that the ship may have regained her route before any loss occurs.

Idem

(2) There is a deviation from the voyage contemplated by the policy,

(a) where the course of the voyage is specially designated by the policy and that course is departed from; or

(b) where the course of the voyage is not specifically designated by the policy but the usual and customary course is departed from.

(3) The intention to deviate is immaterial and there must be ^{Intention} a deviation in fact to discharge the insurer from his liability ^{immaterial} under the contract. R.S.O. 1970, c. 260, s. 47.

48.—(1) Where several ports of discharge are specified by the policy, the ship may proceed to all or any of them, ^{Several ports of discharge} but, in the absence of any usage or sufficient cause to the contrary, she must proceed to them, or such of them as she goes to, in the order designated by the policy, and if she does not there is a deviation.

(2) Where the policy is to “ports of discharge”, within a ^{Idem} given area, which are not named, the ship must, in the absence of any usage or sufficient cause to the contrary, proceed to them, or such of them as she goes to, in their geographical order, and if she does not there is a deviation. R.S.O. 1970, c. 260, s. 48.

49. In the case of a voyage policy, the adventure insured ^{Delay in voyage} must be prosecuted throughout its course with reasonable dispatch, and, if without lawful excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable. R.S.O. 1970, c. 260, s. 49.

50.—(1) Deviation or delay in prosecuting the voyage con- ^{Excuses for deviation or delay} templated by the policy is excused,

(a) where authorized by any special term in the policy; or

(b) where caused by circumstances beyond the control of the master and his employer; or

(c) where reasonably necessary in order to comply with an express or implied warranty; or

(d) where reasonably necessary for the safety of the ship or subject-matter insured; or

(e) for the purpose of saving human life or aiding a ship in distress where human life may be in danger; or

(f) where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or

(g) where caused by the barratrous conduct of the master or crew, if barratry is one of the perils insured against.

Ship to
resume
course when
cause ceases

(2) When the cause excusing the deviation or delay ceases to operate, the ship must resume her course and prosecute her voyage with reasonable dispatch. R.S.O. 1970, c. 260, s. 50.

ASSIGNMENT OF POLICY

Policy
assignable

51.—(1) A marine policy is assignable unless it contains terms expressly prohibiting assignment and it may be assigned either before or after loss.

Effect of
assignment

(2) Where a marine policy has been assigned so as to pass the beneficial interest in such policy, the assignee of the policy is entitled to sue thereon in his own name, and the defendant is entitled to make any defence arising out of the contract that he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

How
assignable

(3) A marine policy may be assigned by endorsement thereon or in other customary manner. R.S.O. 1970, c. 260, s. 51.

Assured who
has no
interest can-
not assign

52. Where the assured has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative; provided that nothing in this section affects the assignment of a policy after loss. R.S.O. 1970, c. 260, s. 52.

PREMIUM

When
premium
payable

53. Unless otherwise agreed, the duty of the assured or his agent to pay the premium and the duty of the insurer to issue the policy to the assured or his agent are concurrent conditions, and the insurer is not bound to issue the policy until payment or tender of the premium. R.S.O. 1970, c. 260, s. 53.

Policy
effected
through
broker

54.—(1) Unless otherwise agreed, where a marine policy is effected on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium and the insurer is directly responsible to the assured for the amount that may be payable in respect of losses or in respect of returnable premium.

Lien on
policy

(2) Unless otherwise agreed, the broker has, as against the assured, a lien upon the policy for the amount of the premium

and his charges in respect of effecting the policy, and, where he has dealt with the person who employs him as a principal, he has also a lien on the policy in respect of any balance on any insurance account that may be due to him from such person, unless when the debt was incurred he had reason to believe that such person was only an agent. R.S.O. 1970, c. 260, s. 54.

55. Where a marine policy effected on behalf of the assured by a broker acknowledges the receipt of the premium, such acknowledgment is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and broker. R.S.O. 1970, c. 260, s. 55.

Effect of
receipt on
policy

LOSS AND ABANDONMENT

56.—(1) Subject to the provisions of this Act and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss that is not proximately caused by a peril insured against.

Included and
excluded
losses

(2) In particular,

Idem

- (a) the insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew;
- (b) unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay is caused by a peril insured against;
- (c) unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by rats or vermin, or for any injury to machinery not proximately caused by maritime perils. R.S.O. 1970, c. 260, s. 56.

57.—(1) A loss may be either total or partial and any loss, other than a total loss as hereinafter defined is a partial loss.

Partial and
total loss

Total loss (2) A total loss may be either an actual total loss or a constructive total loss.

Idem (3) Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive as well as an actual total loss.

Recovery of partial loss (4) Where the assured brings an action for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss.

Where goods incapable of identification (5) Where goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial and not total. R.S.O. 1970, c. 260, s. 57.

Actual total loss **58.**—(1) Where the subject-matter insured is destroyed or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss.

Notice of abandonment (2) In the case of an actual total loss no notice of abandonment need be given. R.S.O. 1970, c. 260, s. 58.

Missing ship **59.** Where the ship concerned in the adventure is missing and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed. R.S.O. 1970, c. 260, s. 59.

Effect of transshipment, etc. **60.** Where, by a peril insured against, the voyage is interrupted at an intermediate port or place under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing and reshipping the goods or other movables, or in transshipping them, and sending them on to their destination, the liability of the insurer continues notwithstanding the landing or transshipment. R.S.O. 1970, c. 260, s. 60.

Constructive total loss defined **61.**—(1) Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable or because it could not be preserved from actual total loss without an expenditure that would exceed its value when the expenditure had been incurred.

Idem (2) In particular, there is a constructive total loss,

(a) where the assured is deprived of the possession of his ship or goods by a peril insured against; and

- (i) it is unlikely that he can recover the ship or goods, as the case may be, or
 - (ii) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered; or
- (b) in the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired, and in estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired; or
- (c) in the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival.
R.S.O. 1970, c. 260, s. 61.

62. Where there is a constructive total loss, the assured ^{Effect of constructive total loss} may either treat the loss as a partial loss or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss. R.S.O. 1970, c. 260, s. 62.

63.—(1) Subject to the provisions of this section, where ^{Notice of abandonment, required} the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment and if he fails to do so the loss can only be treated as a partial loss.

(2) Notice of abandonment may be given in writing or by ^{How given} word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms that indicate the intention of the assured to abandon his insured interest in the subject-matter insured unconditionally to the insurer.

(3) Notice of abandonment must be given with reasonable ^{Idem} diligence after the receipt of reliable information of the loss, but where the information is of a doubtful character, the assured is entitled to a reasonable time to make inquiry.

(4) Where notice of abandonment is properly given, the ^{Refusal to accept} rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment.

(5) The acceptance of an abandonment may be either ^{Acceptance} express or implied from the conduct of the insurer and the mere silence of the insurer after notice is not an acceptance.

Irrevocable (6) Where notice of abandonment is accepted, the abandonment is irrevocable and the acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice.

Where unnecessary (7) Notice of abandonment is unnecessary where, at the time when the assured receives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him.

Waived (8) Notice of abandonment may be waived by the insurer.

Where risk reinsured (9) Where an insurer has reinsured his risk, no notice of abandonment need be given by him. R.S.O. 1970, c. 260, s. 63.

Effect of abandonment **64.**—(1) Where there is a valid abandonment, the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured and all proprietary rights incidental thereto.

Idem (2) Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty, and, where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss. R.S.O. 1970, c. 260, s. 64.

PARTIAL LOSSES (INCLUDING SALVAGE AND GENERAL
AVERAGE AND PARTICULAR CHARGES)

Particular average loss **65.**—(1) A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss.

Particular charges (2) Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges, are called particular charges and particular charges are not included in particular average. R.S.O. 1970, c. 260, s. 65.

Salvage charges, recoverable **66.**—(1) Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils.

defined (2) "Salvage charges" means the charges recoverable under maritime law by a salvor independently of contract but do not include the expenses of services in the nature of salvage rendered by the assured or his agents or any person employed

for hire by them for the purpose of averting a peril insured against, and such expenses, where properly incurred, may be recovered as particular charges or as a general average loss according to the circumstances under which they were incurred. R.S.O. 1970, c. 260, s. 66.

67.—(1) A general average loss is a loss caused by or directly consequential on a general average act and it includes a general average expenditure as well as a general average sacrifice. General average loss

(2) There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure. General average act

(3) Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution. General average contribution

(4) Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss that falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute. General average expenditure, sacrifice

(5) Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer. General average contribution, recovery

(6) In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of, a peril insured against. Where insurer not liable for loss

(7) Where ship, freight, and cargo, or any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those subjects were owned by different persons. R.S.O. 1970, c. 260, s. 67. Where two interests owned by assured

MEASURE OF INDEMNITY

68.—(1) The sum that the assured can recover in respect of a loss on a policy by which he is insured, in the case of an Extent of liability of insurer for loss

unvalued policy to the full extent of the insurable value, or in the case of a valued policy to the full extent of the value fixed by the policy, is called the measure of indemnity.

Idem

(2) Where there is a loss recoverable under the policy, the insurer, or each insurer if there is more than one, is liable for such proportion of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy or to the insurable value in the case of an unvalued policy. R.S.O. 1970, c. 260, s. 68.

Total loss

69. Subject to the provisions of this Act and to any express provision in the policy, where there is a total loss of the subject-matter insured,

- (a) if the policy is a valued policy, the measure of indemnity is the sum fixed by the policy;
- (b) if the policy is an unvalued policy, the measure of indemnity is the insurable value of the subject-matter insured. R.S.O. 1970, c. 260, s. 69.

**Partial loss
of ship**

70. Where a ship is damaged but is not totally lost, the measure of indemnity, subject to any express provision in the policy, is as follows:

1. Where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deduction, but not exceeding the sum insured in respect of any one casualty.
2. Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above.
3. Where the ship has not been repaired and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above. R.S.O. 1970, c. 260, s. 70.

**Partial loss
of freight**

71. Subject to any express provision in the policy, where there is a partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the policy in the case

of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy. R.S.O. 1970, c. 260, s. 71.

72. Where there is a partial loss of goods, merchandise, or other movables, the measure of indemnity, subject to any express provision in the policy, is as follows:

Partial loss
of goods,
merchandise,
etc.

1. Where part of the goods, merchandise, or other movables insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy.
2. Where part of the goods, merchandise, or other movables insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss.
3. Where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value.
4. "Gross value" means the wholesale price or, if there is no such price, the estimated value, with, in either case, freight, landing charges, and duty paid beforehand; provided that, in the case of goods or merchandise customarily sold in bond, the bonded price is deemed to be the gross value.
5. "Gross proceeds" means the actual price obtained at a sale where all charges on sale are paid by the sellers. R.S.O. 1970, c. 260, s. 72.

73.—(1) Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy. The insured value of any part of a species is such proportion of the total insured value of the same as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act.

Apportion-
ment of
valuation

Idem

(2) Where a valuation has to be apportioned and particulars of the prime cost of each separate species, quality, or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities, or descriptions of goods. R.S.O. 1970, c. 260, s. 73.

General
average
contributions
and salvage
charges

74.—(1) Subject to any express provision in the policy, where the assured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject-matter liable to contribution is insured for its full contributory value; but, if such subject-matter is not insured for its full contributory value, or if only part of it is insured, the indemnity payable by the insurer must be reduced in proportion to the under-insurance, and where there has been a particular average loss that constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute.

Extent of
liability

(2) Where the insurer is liable for salvage charges, the extent of his liability must be determined on the like principle. R.S.O. 1970, c. 260, s. 74.

Liabilities to
third parties

75. Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such third party in respect of such liability. R.S.O. 1970, c. 260, s. 75.

General
provisions
as to meas-
ure of
indemnity

76.—(1) Where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provisions of this Act, the measure of indemnity shall be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case.

Idem

(2) Nothing in the provisions of this Act relating to the measure of indemnity affects the rules relating to double insurance, or prohibits the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject-matter insured was not at risk under the policy. R.S.O. 1970, c. 260, s. 76.

Particular
average
warranties

77.—(1) Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy is apportionable, but, if the contract is apportionable, the assured may recover for a total loss of any apportionable part.

(2) Where the subject-matter insured is warranted free ^{Idem} from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against.

(3) Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage.

(4) For the purpose of ascertaining whether the specified percentage has been reached regard shall be had only to the actual loss suffered by the subject-matter insured, and particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded. R.S.O. 1970, c. 260, s. 77. ^{Determination of specified percentage}

78.—(1) Unless the policy otherwise provides and subject to the provisions of this Act, the insurer is liable for successive losses even though the total amount of such losses may exceed the sum insured. ^{Successive losses}

(2) Where, under the same policy, a partial loss that has not been repaired or otherwise made good is followed by a total loss, the assured can only recover in respect of the total loss. ^{Idem}

(3) Nothing in this section affects the liability of the insurer under the suing and labouring clause. R.S.O. 1970, c. 260, s. 78. ^{Effect on liability under suing and labouring clause}

79.—(1) Where the policy contains a suing and labouring clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance and the assured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage. ^{Suing and labouring clause}

(2) General average losses and contributions and salvage charges as defined by this Act are not recoverable under the suing and labouring clause. ^{What not recoverable}

(3) Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy are not recoverable under the suing and labouring clause. ^{Idem}

Duty to
minimize
loss

(4) It is the duty of the assured and his agents in all cases to take such measures as may be reasonable for the purpose of averting or minimizing a loss. R.S.O. 1970, c. 260, s. 79. .

RIGHTS OF INSURER ON PAYMENT

Right of
subrogation,
total loss

80.—(1) Where the insurer pays for a total loss, either of the whole or, in the case of goods, of any apportionable part of the subject-matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss.

Partial loss

(2) Subject to the foregoing provisions, where the insurer pays for a partial loss, he acquires no title to the subject-matter insured or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss in so far as the assured has been indemnified according to this Act by such payment for the loss. R.S.O. 1970, c. 260, s. 80.

Right of
contribution

81.—(1) Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers to contribute rateably to the loss in proportion to the amount for which he is liable under his contract.

Idem

(2) If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt. R.S.O. 1970, c. 260, s. 81.

Effect of
under-
insurance

82. Where the assured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance. R.S.O. 1970, c. 260, s. 82.

RETURN OF PREMIUM

Enforcement
of return

83. Where the premium, or a proportionate part thereof, is declared by this Act to be returnable,

(a) if already paid, it may be recovered by the assured from the insurer; and

- (b) if unpaid, it may be retained by the assured or his agent. R.S.O. 1970, c. 260, s. 83.

84. Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event and that event happens, the premium, or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured. R.S.O. 1970, c. 260, s. 84. Return by agreement

85.—(1) Where the consideration for the payment of the premium totally fails and there has been no fraud or illegality on the part of the assured or his agents, the premium is thereupon returnable to the assured. Return for failure of consideration

(2) Where the consideration for the payment of the premium is apportionable and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the like conditions, thereupon returnable to the assured. Idem

(3) In particular, Idem

- (a) where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided that there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium is not returnable;
- (b) where the subject-matter insured, or part thereof, has never been imperilled, the premium, or, as the case may be, a proportionate part thereof, is returnable; provided that where the subject-matter has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless at such time the insurer knew of the safe arrival;
- (c) where the assured has no insurable interest throughout the currency of the risk, the premium is returnable, provided that this rule does not apply to a policy effected by way of gaming or wagering;
- (d) where the assured has a defeasible interest that is terminated during the currency of the risk, the premium is not returnable;
- (e) where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable;

- (f) subject to the foregoing provisions, where the assured has over-insured by double insurance, a proportionate part of the several premiums is returnable; provided that, if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium is returnable. R.S.O. 1970, c. 260, s. 85.

MUTUAL INSURANCE

Modification
of Act in
case of
mutual
insurance

86.—(1) Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance.

Premium
provisions
not
applicable

(2) The provisions of this Act relating to the premium do not apply to mutual insurance, but a guarantee, or such other arrangement as may be agreed upon, may be substituted for the premium.

Modification
of provisions
of Act

(3) The provisions of this Act, in so far as they may be modified by the agreement of the parties, may in the case of mutual insurance be modified by the terms of the policies issued by the association or by the rules and regulations of the association.

Application
of Act

(4) Subject to the exceptions mentioned in this section, the provisions of this Act apply to a mutual insurance. R.S.O. 1970, c. 260, s. 86.

SUPPLEMENTAL

Ratification
by assured

87. Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of a loss. R.S.O. 1970, c. 260, s. 87.

Implied
obligations
varied by
agreement
or usage

88.—(1) Where any right, duty, or liability would arise under a contract of marine insurance by implication of law, it may be negatived or varied by express agreement, or by usage, if the usage is such as to bind both parties to the contract.

Idem

(2) The provisions of this section extend to any right, duty, or liability declared by this Act which may be lawfully modified by agreement. R.S.O. 1970, c. 260, s. 88.

89. Where by this Act any reference is made to reasonable time, reasonable premium, or reasonable diligence, the question what is reasonable is a question of fact. R.S.O. 1970, c. 260, s. 89. ^{Reasonable time, etc., a question of fact}

90. The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, continue to apply to contracts of marine insurance. R.S.O. 1970, c. 260, s. 90. ^{Rules of common law saved}

SCHEDULE

(Section 31)

FORM OF POLICY

Be it known that.....as well in.....own name as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all doth make assurance and cause.....and them, and every of them, to be insured lost or not lost, at and from..... Upon any kind of goods and merchandises, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel called the.....whereof is master under God, for this present voyage,.....or whosoever else shall go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, is or shall be named or called; beginning the adventure upon the said goods and merchandises from the loading thereof aboard the said ship,.....upon the said ship, etc.,and so shall continue and endure, during her abode there, upon the said ship, etc. And further, until the said ship, with all her ordnance, tackle, apparel, etc., and goods and merchandises whatsoever shall be arrived at.....upon the said ship, etc., until she hath moored at anchor twenty-four hours in good safety; and upon the goods and merchandises, until the same be there discharged and safely landed. And it shall be lawful for the said ship, etc., in this voyage, to proceed and sail to and touch and stay at any ports or places whatsoever.....without prejudice to this insurance. The said ship, etc., goods and merchandises, etc., for so much as concerns the assured by agreement between the assured and assurers in this policy, are and shall be valued at.....

(Sue and
labour
clause)

Touching the adventures and perils which we, the assurers, are contented to bear and do take upon us in this voyage: they are of the seas, men-of-war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainerments of all kings, princes, and people, of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, and ship, etc., or any part thereof. And in case of any loss or misfortune it shall be lawful to the assured, their factors, servants, and assigns, to sue, labour, and travel for, in and about the defence, safeguards, and recovery of the said goods and merchandises, and ship, etc., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured shall be considered as a waiver, or acceptance of abandonment. And it is agreed by us, the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so we, the assurers, are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of

(Waiver
clause)

In witness whereof we, the assurers, have subscribed our names and sums assured in

N.B.—Corn, fish, salt, fruit, flour, and seed are warranted free from (Memorandum)
average, unless general, or the ship be stranded; sugar, tobacco, hemp, flax, hides and skins are warranted free from average, under five pounds per cent; and all other goods, also the ship and freight, are warranted free from average, under three pounds per cent, unless general, or the ship be stranded.

RULES FOR CONSTRUCTION OF POLICY

The following are the rules referred to by this Act for the construction of a policy in the above or other like form, where the context does not otherwise require:

1. Where the subject-matter is insured "lost or not lost" and the loss ^{Lost or} has occurred before the contract is concluded, the risk attaches, unless at ^{not lost} such time the assured was aware of the loss, and the insurer was not.

2. Where the subject-matter is insured "from" a particular place, the ^{From} risk does not attach until the ship starts on the voyage insured.

3. (a) Where a ship is insured "at and from" a particular place, and she is ^{At and from} at that place in good safety when the contract is concluded, the risk attaches immediately.

(b) If she be not at that place when the contract is concluded, the risk ^(Ship) attaches as soon as she arrives there in good safety, and, unless the policy otherwise provides, it is immaterial that she is covered by another policy for a specified time after arrival.

(c) Where chartered freight is insured "at and from" a particular place, ^(Freight) and the ship is at that place in good safety when the contract is concluded, the risk attaches immediately. If she be not there when the contract is concluded, the risk attaches as soon as she arrives there in good safety.

(d) Where freight, other than chartered freight, is payable without ^{Idem} special conditions and is insured "at and from" a particular place, the risk attaches pro rata as the goods or merchandise are shipped; provided that if there be cargo in readiness which belongs to the ship-owner, or which some other person has contracted with him to ship, the risk attaches as soon as the ship is ready to receive such cargo.

4. Where goods or other movables are insured "from the loading there- ^{From the} of", the risk does not attach until such goods or movables are actually ^{loading} on board, and the insurer is not liable for them while in transit from the shore ^{thereof} to the ship.

5. Where the risk on goods or other movables continues until they are ^{Safely} "safely landed", they must be landed in the customary manner and within a ^{landed} reasonable time after arrival at the port of discharge, and if they are not so landed the risk ceases.

6. In the absence of any further licence or usage, the liberty to touch ^{Touch and} and stay "at any port or place whatsoever" does not authorize the ship ^{stay} to depart from the course of her voyage from the port of departure to the port of destination.

- Perils of the seas** 7. The term "perils of the sea" refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of the winds and waves.
- Pirates** 8. The term "pirates" includes passengers who mutiny and rioters who attack the ship from the shore.
- Thieves** 9. The term "thieves" does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers.
- Restraint of princes** 10. The term "arrests, etc., of kings, princes, and people" refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process.
- Barratry** 11. The term "barratry" includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer.
- All other perils** 12. The term "all other perils" includes only perils similar in kind to the perils specifically mentioned in the policy.
- Average unless general** 13. The term "average unless general" means a partial loss of the subject-matter insured other than a general average loss, and does not include "particular charges."
- Stranded** 14. Where the ship has stranded, the insurer is liable for the excepted losses, although the loss is not attributable to the stranding, provided that when the stranding takes place the risk has attached and, if the policy be on goods, that the damaged goods are on board.
- Ship** 15. The term "ship" includes the hull, materials and outfit, stores and provisions for the officers and crew, and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade, and also, in the case of a steamship, the machinery, boilers, and coals, oils, and engine stores, if owned by the assured.
- Freight** 16. The term "freight" includes the profit derivable by a ship-owner from the employment of his ship to carry his own goods or movables, as well as freight payable by a third party, but does not include passage-money.
- Goods** 17. The term "goods" means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board.

In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods.

R.S.O. 1970, c. 260, Sched.

CHAPTER 256

Marriage Act

1.—(1) In this Act,

Interpre-
tation

- (a) “band” means a band as defined in the *Indian Act* R.S.C. 1970,
c. I-6 (Canada);
- (b) “church” includes chapel, meeting-house or place set aside for religious worship;
- (c) “Indian” means a person who is registered as an Indian or entitled to be registered as an Indian under the *Indian Act* (Canada);
- (d) “issuer” means a person authorized under this Act to issue marriage licences;
- (e) “judge” means a provincial judge or a judge of a county or district court;
- (f) “licence” means a marriage licence issued under this Act;
- (g) “Minister” means the Minister of Consumer and Commercial Relations;
- (h) “prescribed” means prescribed by the regulations;
- (i) “regulations” means the regulations made under this Act;
- (j) “reserve” means a reserve as defined in the *Indian Act* (Canada).

(2) This Act does not apply in respect of any ceremony or form of marriage gone through by two persons who are married to each other by a marriage previously solemnized Application
of Act to
subsequent
ceremonies

in accordance with this Act or recognized as valid in Ontario. 1977, c. 42, s. 1.

Administra-
tion

2. The administration of this Act is under the direction of the Minister. 1977, c. 42, s. 2.

Delegation
of powers
and duties

3. Where, under this Act, a power or duty is granted to or vested in the Minister, he may in writing, subject to the approval of the Lieutenant Governor in Council, delegate that power or duty to the Deputy Minister of Consumer and Commercial Relations, or to any officer or officers of the Ministry of Consumer and Commercial Relations, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in his delegation. 1977, c. 42, s. 3.

Authority
to marry

4. No marriage may be solemnized except under the authority of a licence issued in accordance with this Act or the publication of banns. 1977, c. 42, s. 4.

Who may
marry

5.—(1) Any person who is of the age of majority may obtain a licence or be married under the authority of the publication of banns, provided no lawful cause exists to hinder the solemnization.

Idem

(2) No person shall issue a licence to a minor, or solemnize the marriage of a minor under the authority of the publication of banns, except where the minor is of the age of sixteen years or more and has the consent in writing of both parents in the form prescribed by the regulations.

Giving of
consent

(3) The consent referred to in subsection (2) is not required in respect of a person who is a widow, a widower or divorced.

Idem

(4) Where one of the parents of a minor is dead or both parents are living apart, the consent required by subsection (2) may be given by the parent having actual or legal custody of the minor.

Idem

R.S.O. 1980,
c. 118

(5) Where both parents of a minor are dead or are voluntary or involuntary patients in a psychiatric facility, or are residents of a facility under the *Developmental Services Act*, the consent required by subsection (2) may be given by a lawfully appointed guardian or an acknowledged guardian who has brought up or who for the three years immediately preceding the intended marriage has supported the minor.

(6) Where a minor is made a ward of someone other than ^{Idem} a parent by order of a court or under any Act, the consent required by subsection (2) may be given by the lawful guardian of the minor or person responsible for exercising the rights and duties of a guardian of the minor. 1977, c. 42, s. 5.

6.—(1) Where a person whose consent is required by section 5 is not available or unreasonably or arbitrarily withholds his consent, the person in respect of whose marriage the consent is required may apply to a judge without the intervention of a next friend for an order dispensing with the consent. ^{Application to dispense with consent}

(2) The judge shall hear the application in a summary ^{Powers of judge} manner and may, in his discretion, make an order dispensing with the consent required by section 5. 1977, c. 42, s. 6.

7. No person shall issue a licence to or solemnize the marriage of any person whom he knows or has reasonable grounds to believe lacks capacity to marry by reason of being mentally ill or mentally defective or under the influence of intoxicating liquor or drugs. 1977, c. 42, s. 7. ^{Persons mentally ill or under influence}

8.—(1) An applicant for a licence who has been previously married is entitled to be issued a licence if such marriage has been dissolved or annulled and such dissolution or annulment is recognized under the law of Ontario and the applicant otherwise complies with the requirements of this Act. ^{Where dissolution of former marriage recognized in Ontario}

(2) Subject to subsection (6), no issuer shall issue a licence to a person whose previous marriage has been dissolved or annulled in Canada unless such person deposits with the issuer, ^{Material to be filed with issuer where dissolution in Canada}

(a) the final decree or judgment dissolving or annulling the marriage or a copy of the final decree or judgment or Act dissolving or annulling the marriage, certified by the proper officer; and

(b) such other material as the issuer may require.

(3) Subject to subsection (6), no issuer shall issue a licence to a person whose previous marriage has been dissolved or annulled elsewhere than in Canada, unless the authorization in writing of the Minister is obtained upon the deposit of such material as he may require. ^{Where dissolution, etc., outside Canada}

Review of
refusal to
issue
licence

R.S.O. 1980,
c. 224

(4) Where an issuer refuses to issue a licence, or the Minister refuses to issue an authorization under subsection (3), the applicant may apply to the Divisional Court for judicial review under the *Judicial Review Procedure Act* and for an order directing that a licence be issued to him and if the court finds that he is so entitled it may make such an order.

Parties

(5) The applicant, the Minister and such other persons as the court may order are parties to an application under subsection (4).

Issue of
licence
under court
order

(6) Where an applicant for a licence files with an issuer, together with his application, an order of the Divisional Court made on an application under subsection (4) directing that a licence be issued to him, the issuer shall issue the licence. 1977, c. 42, s. 8.

Application
for presumption
of death

9.—(1) A married person whose spouse is missing and who alleges,

- (a) that his spouse has been continuously absent for at least seven years immediately preceding the application;
- (b) that his spouse has not been heard from or heard of during such period by the applicant or to the knowledge of the applicant by any other person; and
- (c) that the applicant has made reasonable inquiries and has no reason to believe that his spouse is living,

may apply to the judge of a county or district court for an order under this section.

Order

(2) Upon being satisfied as to the truth of the matters alleged, the judge may, in his discretion, make an order declaring that the spouse shall be presumed dead.

Remarriage
authorized

(3) Where an order has been obtained under this section, the person in whose favour the order was made may, subject to the provisions of this Act, obtain a licence or be married under the authority of the publication of banns upon depositing a copy of the order with the person issuing the licence or solemnizing the marriage together with an affidavit in the prescribed form.

(4) The order has no effect for any purpose other than the issuance of a licence under subsection (3). 1977, c. 42, s. 9.

Effect of order

10. Notwithstanding anything in this Act, if the Minister considers that circumstances justify the issue of a licence in any particular case, he may, in his absolute discretion, authorize the issue of the licence. 1977, c. 42, s. 10.

Discretionary power of Minister

11.—(1) Marriage licences may be issued by the clerk of every city, town and village.

Issuers

(2) Where it is considered expedient for the public convenience, the Lieutenant Governor in Council may appoint as an issuer the clerk of any township, or any person resident in a county, or in a township adjacent thereto, or in a provisional judicial district, or a member of a band upon the recommendation of the council of the band.

In townships and unorganized territory

(3) An issuer may, with the approval in writing of the Minister or of the head of the council of the municipality of which he is clerk, appoint in writing one or more deputies to act for him; and any such deputy while so acting has the power of the issuer appointing him.

Deputy issuers

(4) The issuer shall, upon appointing a deputy, forthwith transmit to the Minister a notice of the appointment, and of the name and official position of the person by whom the appointment has been approved, and the Minister may at any time cancel the appointment.

Notice of appointment of deputy

(5) The deputy shall sign each licence issued by him with the name of the issuer as well as his own name in the following manner:

Signature of licences by deputy

AB, Issuer of Marriage Licences, per CD, Deputy Issuer.

1977, c. 42, s. 11.

12.—(1) An issuer or the Minister may require evidence to identify any applicant or to establish his status and may examine, under oath if required, any applicant or other person as to any matter pertaining to the issue of a licence.

Evidence on applications

(2) Where an issuer has reason to believe that any information set out in an application for a licence is untrue, he shall not issue the licence unless, on the production of such further evidence as he may require, he is satisfied as to the truth of the information. 1977, c. 42, s. 12.

Untrue information

Record of
licences

13.—(1) Every issuer shall keep in his office a record of the serial number and the date of issue of every licence issued by him, and the names and addresses of the parties to the intended marriage.

Searches

(2) Any person is entitled, upon application, to have a search made respecting any licence issued within three months immediately preceding the date of application. 1977, c. 42, s. 13.

Material to be
forwarded to
Registrar
General

14. Every issuer immediately upon issuing a licence and every person registered as authorized to solemnize marriage upon publishing banns shall forward to the Registrar General,

(a) any consent under section 5;

(b) any judge's order under section 6;

(c) any affidavit or judge's order under section 9;

(d) any documentary or other material filed on the application for a licence under section 8;

(e) any affidavit as to age;

(f) any documentary material obtained under section 12. 1977, c. 42, s. 14.

Oaths

15. Issuers may administer oaths for the purposes of this Act. 1977, c. 42, s. 15.

Indians

16. Where both parties to an intended marriage are Indians ordinarily resident on a reserve in Ontario or on Crown lands in Ontario, no fee shall be charged for the licence. 1977, c. 42, s. 16.

Publication
of banns

17.—(1) Where a marriage is to be solemnized under the authority of the publication of banns, the intention to marry shall be proclaimed openly in an audible voice during divine service,

(a) where the parties are in the habit of attending worship at the same church, being within Canada, at that church; or

(b) where the parties are in the habit of attending worship in different churches, being within Canada, in each such church.

Method and
time of
publication

(2) The banns shall be published according to the usage of the denomination, faith or creed of the church in which they are published and during divine Sunday service.

(3) Where the usage of any denomination, faith or creed ^{Exception} substitutes any other day as the usual and principal day of the week for the celebration of divine service, the banns shall be published on such other day.

(4) The person or persons who publish banns shall certify ^{Proof} proof thereof in the prescribed form. 1977, c. 42, s. 17.

18. Banns shall not be published where either of the ^{Where banns not to be published} parties to the intended marriage has been married and the marriage has been dissolved or annulled. 1977, c. 42, s. 18.

19. Form 1 respecting the prohibited degrees of affinity ^{Prohibited degrees to be endorsed} and consanguinity shall be endorsed on the licence and on the proof of publication of banns. 1977, c. 42, s. 19.

20.—(1) No person shall solemnize a marriage unless he ^{Who may solemnize marriage} is authorized by or under section 24 or is registered under this section as a person authorized to solemnize marriage.

(2) Upon application the Minister may, subject to subsec- ^{Application for registration} tion (3), register any person as a person authorized to solemnize marriage.

(3) No person shall be registered unless it appears to the ^{Who may be registered} Minister,

- (a) that the person has been ordained or appointed according to the rites and usages of the religious body to which he belongs, or is, by the rules of that religious body, deemed ordained or appointed;
- (b) that the person is duly recognized by the religious body to which he belongs as entitled to solemnize marriage according to its rites and usages;
- (c) that the religious body to which the person belongs is permanently established both as to the continuity of its existence and as to its rites and ceremonies; and
- (d) that the person is resident in Ontario or has his parish or pastoral charge in whole or in part in Ontario; provided that in the case of a person who is in Ontario temporarily and who, if resident in Ontario, might be registered under this section, the Minister may register him as authorized to solemnize marriage during a period to be fixed by the Minister.

Where no person authorized to solemnize marriage

(4) Notwithstanding subsection (1), where it appears to the Minister that the doctrines of a religious body described in clause (3) (c) do not recognize any person as authorized to solemnize marriage, the Minister may register a person duly designated by the governing authority of the religious body who shall, in respect of marriages performed according to the rites, usages and customs of the religious body, perform all the duties imposed by this Act upon a person solemnizing a marriage, other than solemnizing the marriage.

Idem

(5) Where a person registered under subsection (4) performs the duties imposed by subsection (4), every marriage solemnized according to the rites, usages and customs of the religious body is valid. 1977, c. 42, s. 20.

Register

21.—(1) The Minister shall keep a register of the name of every person registered as a person authorized to solemnize marriage, the date of such registration, and such other particulars as he considers advisable.

Certificate of registration

(2) The Minister may issue a certificate of registration under this section in the prescribed form. 1977, c. 42, s. 21.

Cancellation of registration

22.—(1) Where it appears to the Minister that any person registered as authorized to solemnize marriage has ceased to possess the qualifications entitling him to be so registered, or for any other cause, the Minister may cancel the registration.

Notice of change

(2) Every religious body, members of which are registered under this Act, shall notify the Minister of the name of every such member so registered who has died or has ceased to reside in Ontario or has ceased to be associated with such religious body. 1977, c. 42, s. 22.

Publication of registration and cancellation

23. When a person is registered under this Act as authorized to solemnize marriage, and when any such registration is cancelled, the Minister shall publish notice thereof in *The Ontario Gazette*. 1977, c. 42, s. 23.

Civil marriage

24.—(1) A judge, a justice of the peace or any other person of a class designated by the regulations may solemnize marriages under the authority of a licence.

Time and place

(2) The solemnization of a marriage by a judge shall take place in the judge's office and shall be performed between the hours of 9 o'clock in the morning and 5 o'clock in the afternoon.

Form of ceremony

(3) No particular form of ceremony is required except that in some part of the ceremony, in the presence of the person

solemnizing the marriage and witnesses, each of the parties shall declare:

I do solemnly declare that I do not know of any lawful impediment why I, AB, may not be joined in matrimony to CD,

and each of the parties shall say to the other:

I call upon these persons here present to witness that I, AB, do take you, CD, to be my lawful wedded wife (*or* husband),

after which the person solemnizing the marriage shall say:

I, EF, by virtue of the powers vested in me by the *Marriage Act*, do hereby pronounce you AB and CD to be husband and wife.

1977, c. 42, s. 24.

25. Every marriage shall be solemnized in the presence of the parties and at least two witnesses who shall affix their names as witnesses to the entry in the register made under section 28. 1977, c. 42, s. 25.

Attendance
of parties and
witnesses

26. No marriage shall be solemnized under the authority of the publication of banns unless proof of publication by the person or persons publishing the banns has been deposited with the person solemnizing the marriage. 1977, c. 42, s. 26.

Proof of
publication

27.—(1) A marriage shall not be solemnized under the authority of a licence earlier than the third day after the date of the issue of the licence, but the Minister in his absolute discretion may authorize the solemnization of the marriage earlier than such third day.

Waiting
period:
under
licence

(2) A marriage shall not be solemnized under the authority of the publication of banns, earlier than the fifth day after the date of the publication of banns.

Idem:
under banns

(3) A marriage shall be solemnized only within the three months immediately following the issue of the licence or the publication of banns, as the case may be. 1977, c. 42, s. 27.

Time within
which
marriage to
be solemnized

28.—(1) Every person shall immediately after he has solemnized a marriage,

Entry in
marriage
register

(a) where the marriage was solemnized in a church, enter in the church register kept for the purpose; or

- (b) where the marriage was solemnized elsewhere than in the church, enter in a register kept by him for the purpose,

the particulars prescribed by the regulations, and the entry shall be authenticated by his signature and those of the parties and witnesses.

Marriage
certificate

(2) Every person who solemnizes a marriage shall, at the time of the marriage, if required by either of the parties thereto, give a certificate of the marriage specifying the names of the parties, the date of the marriage, the names of the witnesses, and whether the marriage was solemnized under the authority of a licence or publication of banns. 1977, c. 42, s. 28.

Supply of
marriage
registers

29.—(1) Every person or religious body authorized to solemnize marriages may apply to the Minister for a marriage register, and the Minister shall thereupon supply the register.

Property of
Crown

(2) Every register supplied by the Minister is the property of the Crown. 1977, c. 42, s. 29.

Protection
of persons
solemnizing
marriage in
good faith

30. No person who solemnizes or purports to solemnize a marriage is subject to any action or liability by reason of there having been any legal impediment to the marriage unless, at the time he performed the ceremony, he was aware of the impediment. 1977, c. 42, s. 30.

Marriages
solemnized
in good
faith

31. If the parties to a marriage solemnized in good faith and intended to be in compliance with this Act are not under a legal disqualification to contract such marriage and after such solemnization have lived together and cohabited as man and wife, such marriage shall be deemed a valid marriage, notwithstanding that the person who solemnized the marriage was not authorized to solemnize marriage, and notwithstanding the absence of or any irregularity or insufficiency in the publication of banns or the issue of the licence. 1977, c. 42, s. 31.

Breach of
promise of
marriage
abolished

32.—(1) No action shall be brought for a breach of a promise to marry or for any damages resulting therefrom.

Application
of subs. (1)

(2) Subsection (1) does not apply in respect of actions for breach of promise to marry or damages resulting therefrom commenced before the 1st day of August, 1978. 1977, c. 42, s. 32.

Recovery of
gifts made in
contempla-
tion of
marriage

33. Where one person makes a gift to another in contemplation of or conditional upon their marriage to each

other and the marriage fails to take place or is abandoned, the question of whether or not the failure or abandonment was caused by or was the fault of the donor shall not be considered in determining the right of the donor to recover the gift. 1977, c. 42, s. 33.

34. The Lieutenant Governor in Council may make regu-^{Regulations}lations,

- (a) prescribing forms for the purposes of this Act and providing for their use, and requiring any matter therein to be verified by affidavit;
- (b) prescribing any matter required by this Act to be prescribed by the regulations;
- (c) requiring the payment of fees in respect of any matter required or authorized to be done under this Act, and providing for the retention of fees or any portion thereof by issuers and persons solemnizing marriages or any class of them and for the commutation of such fees;
- (d) prescribing the duties of issuers;
- (e) requiring persons authorized to solemnize marriages to furnish such information and returns as are prescribed;
- (f) amending Form 1 to make it conform to the law for the time being;
- (g) designating classes of persons authorized to solemnize marriages under section 24. 1977, c. 42, s. 34.

35.—(1) Every person who knowingly makes any false^{Penalty: false statements} statement in any document required under this Act, in addition to any other penalty or punishment to which he may be liable, is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both.

(2) Every person who contravenes any provision of this^{Idem: general} Act for which no other penalty is provided is guilty of an offence and on conviction is liable to a fine of not more than \$500. 1977, c. 42, s. 35.

FORM 1

(Section 19)

Degrees of affinity and consanguinity which, under the statutes in that behalf, bar the lawful solemnization of marriage.

A man may not marry his

1. Grandmother
2. Grandfather's wife
3. Wife's grandmother
4. Aunt
5. Wife's aunt
6. Mother
7. Step mother
8. Wife's mother
9. Daughter
10. Wife's daughter
11. Son's wife
12. Sister
13. Granddaughter
14. Grandson's wife
15. Wife's granddaughter
16. Niece
17. Nephew's wife

A woman may not marry her

1. Grandfather
2. Grandmother's husband
3. Husband's grandfather
4. Uncle
5. Husband's uncle
6. Father
7. Step father
8. Husband's father
9. Son
10. Husband's son
11. Daughter's husband
12. Brother
13. Grandson
14. Granddaughter's husband
15. Husband's grandson
16. Nephew
17. Niece's husband

The relationships set forth in this table include all such relationships, whether by the whole or half blood.

1977, c. 42, Form 1.

CHAPTER 257

Master and Servant Act

1. In this Act, “wages” means wages or salary whether the employment in respect of which the same is payable is by time or by the job or piece or otherwise. R.S.O. 1970, c. 263, s. 1. Interpretation

2. No voluntary contract of service or indenture is binding for longer than a term of nine years from the date thereof. R.S.O. 1970, c. 263, s. 2. Limitation of voluntary contract of service

3.—(1) An agreement entered into by a workman, servant or employee and his master or employer under which a share of the profits of any trade, calling, business or employment is to be paid to the workman, servant or employee in lieu of or in addition to salary, wages or other remuneration, unless the agreement otherwise provides or a contrary intention may be reasonably inferred therefrom, does not, Agreement for share in profits of business

- (a) create any relation in the nature of a partnership or the rights or liabilities of partners; or
- (b) give to the workman, servant or employee the right to examine into the accounts or interfere in the management or affairs of the trade, calling or business.

(2) Any statement or return by the master or employer of the net profits of the trade, calling, business or employment on which he declares and appropriates the share of profits payable under such agreement is final and conclusive between the parties and all persons claiming under them, and is not impeachable upon any ground, except fraud. R.S.O. 1970, c. 263, s. 3. Employer's statement of profits to be final

4.—(1) Upon the complaint on oath of a servant or labourer against his master or employer concerning any non-payment of wages a justice of the peace may summon the master or employer to appear before him at a reasonable time to be stated in the summons, and he or some other justice upon proof on oath of the personal service of the summons, or of its service as hereinafter authorized, shall examine into the matter of the complaint, whether or not the master or employer appears, and upon due proof of the cause of complaint the justice may discharge the servant or labourer from the service Complaints by servants for non-payment of wages

or employment of the master or employer, and may direct the payment to him of any wages found to be due, not exceeding the sum of \$500 and the justice shall make such order as to him seems just and reasonable for the payment of such wages, with costs, and in case of the non-payment of the same, together with the costs, for the space of eight days after the order has been made the justice shall issue his warrant of distress for the levying of the wages, together with the costs of the order and of the distress.

Warrant
for arrest

(2) Where the justice of the peace before whom a complaint is laid under this section is satisfied that the master or employer is about to quit the territorial jurisdiction of the justice of the peace, the justice of the peace may issue a warrant in Form 1 for the arrest of the master or employer.

Where
complaints
may be
prosecuted

(3) A complaint may be prosecuted and determined in any county or district in which the person complained against is found, or in any county or district in which the person complained against carries on business.

Time within
which pro-
ceedings may
be taken

(4) Proceedings may be taken under this Act within six months after the engagement or employment has ceased, or within six months after the last instalment of wages under the agreement of hiring has become due, whichever last happens.

Work done
in Ontario
under
agreement
made out of
Ontario

(5) Proceedings may be had for non-payment of wages in respect of service or labour performed in Ontario upon a verbal or written agreement or bargain made out of Ontario.

When master
claims
set-off

(6) Where the master or employer claims a set-off or makes a claim for unliquidated damages, the justice of the peace shall investigate the same and give judgment for the balance of wages, if any, due to the claimant after deducting the set-off or claim.

Limit of
jurisdiction
as to set-off

(7) The justice of the peace does not have jurisdiction to adjudicate upon a set-off or claim exceeding the claim for wages except to the extent of the wages. R.S.O. 1970, c. 263, s. 4.

Additional
remedy in
cases before
provincial
judge

5. Where the proceedings are taken before a provincial judge, and payment of wages is ordered by him to be made by the master or employer to the servant or labourer, and the same are not paid within the time limited by the order, the same proceedings may be taken by the person claiming the benefit of the order as may be taken by a party having an unsatisfied judgment or order in a small claims court for the payment of any debt, damages or costs, as respects the

examination of the judgment debtor touching his estate and effects, the means he has of discharging his liability, and the disposal he has made of any property, and the provincial judge has the like power and authority to enforce payment of the debt as are possessed by a judge of a small claims court in like cases, and the practice and proceedings thereon shall be the same as nearly as may be and have the same effect as provided in the *Small Claims Courts Act*, with respect to judgment debtors. R.S.O. 1970, c. 263, s. 5.

R.S.O. 1980,
c. 476

6. Subject to section 8, the provincial judge may name in the order for payment of wages such time, not exceeding twenty-one days, as to him may seem just and reasonable for the payment of the same and costs, and in case of non-payment within such time the complainant is entitled to take forthwith the proceedings for enforcing payment herein provided. R.S.O. 1970, c. 263, s. 6.

Limit of
time for
payment

7. Where an order is made under this Act by a provincial judge for the payment of money, such order may be proceeded upon and enforced in the manner provided by section 722 of the *Criminal Code* (Canada) and it applies as if it were set out and enacted herein. R.S.O. 1970, c. 263, s. 7.

Procedure
upon order
of provincial
judge

R.S.C. 1970,
c. C-34

8.—(1) In the case of wages due to any mechanic, labourer or other person in respect of work of the character mentioned in section 6 of the *Mechanics' Lien Act*, the jurisdiction of a provincial judge in a city under this Act extends to wages for thirty days, or for a balance equal to the wages for thirty days, though the same or the balance thereof exceed the sum of \$400.

Jurisdiction
of provin-
cial judges
in cities

R.S.O. 1980,
c. 261

(2) Where no specific rate of wages has been expressly agreed to between the parties, the provincial judge in a city may order payment of the wages, reckoning the amount thereof according to the current rate of wages in the city in like cases, or according to what may appear to be a just and reasonable allowance.

Where no
specific rate
of wages
agreed on

(3) The order shall direct payment of the wages to be made forthwith, and a warrant of distress shall be issued accordingly, unless the master or employer makes oath, and the provincial judge believes, that the master or employer is unable to make the payment forthwith, and expects to be able to pay and intends to pay the same within the time given, and unless also the provincial judge considers the proposed delay to be under the circumstances reasonable, and the provincial judge, if he sees fit, may order security to be given as a condition of delay.

Order for
payment
of wages,
enforcing

Adjourn-
ment at in-
stance of
master

(4) In case of an adjournment at the instance of the master or employer the same shall be on payment for the claimant's time in attending the court, the amount to be fixed by the provincial judge, and such payment shall be made forthwith unless the provincial judge sees reason for dispensing with immediate payment.

Enforcement
in small
claims court

(5) The order for payment may be filed in the small claims court that would be the proper court for bringing an action for the wages, and on such filing the order becomes a judgment of such small claims court and may be enforced as a judgment of that court. R.S.O. 1970, c. 263, s. 8.

Service of
summons,
etc.

9.—(1) Every summons issued under this Act against an individual, firm or corporation, and every subsequent paper or proceeding in the action or proceeding in which the summons has been issued may be served, except in the cases provided for by subsection (2), upon the person to whom it is directed either by delivering it to him personally or, if he cannot be found conveniently, by leaving the same for him at any place where such individual, firm or corporation carries on business within the county or district in which the justice of the peace issuing the summons has jurisdiction, with some adult person employed in the office or place of business of such person.

Service on
certain
public
companies

(2) In cases against railway, telegraph, telephone or express companies every such summons and other papers may be served on any agent of the company whose office or place of business as such agent is within such county or district, and for the purposes of this section the word "agent" includes,

- (a) in the case of a railway company, a station master having charge of a station belonging to the company;
- (b) in the case of a telegraph company, a person having charge of a telegraph office belonging to the company;
- (c) in the case of a telephone company, a person having charge of a telephone office belonging to the company; and
- (d) in the case of an express company, a person having charge of an express office belonging to the company.

Effect of
service under
this section

(3) Service as authorized by this section has the same effect as personal service. R.S.O. 1970, c. 263, s. 9.

Appeal

10.—(1) An appeal from an order for the payment of wages, or order of dismissal from service or employment, or against any decision of any justice of the peace or provincial judge

under this Act shall be made to the small claims court of the division in which the cause of action arose or in which the party or parties complained against, or one of them, resided at the time of the making of the complaint, or to the small claims court held in the division in which the party or parties complained against or one of them carried on business, and in case of dismissal of the appeal, or affirmance of the order or decision, the court appealed to shall enforce the order for payment of wages or of dismissal, and for the payment of the costs awarded, and shall, if necessary, issue process for carrying such judgment into effect.

(2) The appeal shall be taken within the time and as nearly as may be, in the manner provided by the *Provincial Offences Act* as to appeals to a county or district court, and the proceedings upon and incidental to the appeal and subsequent thereto shall, except as provided by subsection (1) and by section 11, be the same as nearly as may be, as in the case of an appeal under the *Provincial Offences Act*. R.S.O. 1970, c. 263, s. 10.

Idem
R.S.O. 1980,
c. 400

11.—(1) The appeal may be tried with a jury if the appellant files with the clerk of the court within ten days after the order or decision a notice requiring a jury, or if the respondent within four days after the service of the notice of appeal upon him files a notice with the clerk requiring a jury, and if the proper fees are in either case deposited with the clerk; otherwise the judge may try the appeal without a jury or may summon a jury from the body of the court as he considers proper.

Trial with
or without
jury

(2) Upon the application of either party when a jury is not required the judge may try the appeal at such time and place as he may appoint, and upon such notice as he considers reasonable. R.S.O. 1970, c. 263, s. 11.

Time and
place for
hearing
appeals

12.—(1) Every agreement or bargain, verbal or written, expressed or implied, on the part of any workman, servant, labourer, mechanic, or other person employed in any kind of manual labour intended to be dealt with in this Act whereby it is agreed that this Act shall not apply, or that the remedies hereby provided shall not be available for the benefit of any person entering into such agreement, is hereby declared to be null and void and of no effect as against any such workman, servant, labourer, mechanic, or other person.

Contracts
waiving
application
of Act to
be void

(2) This section does not apply to any manager, officer or superintendent. R.S.O. 1970, c. 263, s. 12.

Section not
to apply to
certain
persons

FORM 1

Master and Servant Act.

(Section 4 (2))

WARRANT TO ARREST

Province of Ontario }
 of }

To the Peace Officers in the said.....

Whereas a complaint has been made against.....
 of.....under the *Master and Servant Act*; and
 whereas I am satisfied that the said.....is about to quit
 my territorial jurisdiction;

This is therefore to command you, in Her Majesty's name, forthwith to
 arrest the said.....and bring him before
to be dealt with according to law.

DATED at....., this.....day of....., 19....

.....
 Justice of the Peace

R.S.O. 1970, c. 263, Form 1.

CHAPTER 258

Matrimonial Causes Act

1.—(1) In this section, “child of the marriage” and “child” include a child adopted under Part III of the *Child Welfare Act*, or a predecessor thereof, by the parties to the action but do not include a child of the marriage of the parties who has been adopted by another person under Part III of the *Child Welfare Act* or a predecessor thereof. R.S.O. 1970, c. 265, s. 6 (1). Interpretation
R.S.O. 1980,
c. 66

(2) Where a petition or counter-petition for divorce or the statement of claim in an action for the annulment of a marriage contains particulars of any child of the marriage who, at the time of the commencement of the action, Official
Guardian's
report

(a) is under sixteen years of age; or

(b) is sixteen or seventeen years of age and is in full-time attendance at an educational institution or through illness or infirmity is unable to earn a livelihood,

the Official Guardian shall cause an investigation to be made and shall report to the court upon all matters relating to the custody, maintenance and education of the ‘child’. 1972, c. 50, s. 1 (1).

(3) The Official Guardian may engage any person to make such investigation on his behalf. Agents

(4) An affidavit of any person making the investigation, verifying the report as to such facts as are within his knowledge and setting out the source of his information and his belief as to any other facts, with the report marked as an exhibit thereto, shall be received in evidence upon the trial of the action. R.S.O. 1970, c. 265, s. 6 (3, 4). Report to be
received in
evidence

(5) Where the facts contained in the report are disputed, the Official Guardian or his agent shall if directed by the court, and may when not so directed, attend the trial on behalf of the child and cause the person making the investigation to attend as a witness. 1972, c. 50, s. 1 (2). Attendance
at trial

Payment of
fees and
disburse-
ments

R.S.O. 1980,
c. 6

(6) The petitioner in a petition for divorce or the plaintiff in an action for annulment shall pay such fees for and disbursements arising from an investigation in respect of the petition or action as are prescribed under the *Administration of Justice Act*.

Idem

(7) The Official Guardian shall not file his report of the investigation with the court until such fees and disbursements have been paid unless otherwise directed by the court. 1972, c. 50, s. 1 (3).

Rules

R.S.O. 1980,
c. 223

(8) The Rules Committee may make rules for carrying this section into effect and except where inconsistent with this section or such rules, the *Judicature Act* and the rules made thereunder apply to proceedings under this section. R.S.O. 1970, c. 265, s. 6 (10).

Fees, etc.,
deemed costs
in action

(9) The fees and disbursements of the Official Guardian payable under subsection (6) shall be deemed to be costs incurred in the action for the purposes of any award as to costs by the judge. 1972, c. 50, s. 1 (4).

Rights of
appeal

2.—(1) Any party to an action for the annulment of a marriage in which a judgment nisi is granted may appeal to the Court of Appeal from the judgment nisi, but no appeal lies from the judgment absolute in any such action by any party who having had time and opportunity to appeal from the judgment nisi has not done so.

Idem

(2) Any party to an action for the annulment of a marriage in which a judgment nisi is granted or any person who intervened or who applied to show cause why the judgment should not be made absolute may appeal to the Court of Appeal from the judgment or order disposing of the matter raised by the intervention or by the application. R.S.O. 1970, c. 265, s. 7 (1, 2), *revised*.

Rules
confirmed
with right
to repeal,
amend, etc.

3. The rules of court relating to the conduct of matrimonial causes may be repealed, amended or varied by the Rules Committee, subject to the approval of the Lieutenant Governor in Council. R.S.O. 1970, c. 265, s. 9.

Her
Majesty's
Proctor,
appointment

4. There shall be an officer known as Her Majesty's Proctor who shall be appointed by the Lieutenant Governor in Council. R.S.O. 1970, c. 265, s. 10.

CHAPTER 259

McMichael Canadian Collection Act

1. In this Act,

Interpreta-
tion

- (a) "Board" means the board of trustees of the Corporation;
- (b) "collection" means the art works and objects vested in the Corporation or Her Majesty the Queen in right of Ontario and held by the Corporation for exhibition or display;
- (c) "Corporation" means The McMichael Canadian Collection;
- (d) "lands of the Corporation" means the lands described in the Schedule hereto together with any lands designated in the regulations as lands of the Corporation, and includes all buildings and structures thereon;
- (e) "Minister" means the Minister of Culture and Recreation or such other member of the Executive Council as the Lieutenant Governor in Council designates;
- (f) "regulations" means the regulations made under this Act. 1972, c. 134, s. 1; O. Reg. 53/76.

2.—(1) The McMichael Canadian Collection is continued as a corporation without share capital. 1972, c. 134, s. 2, *part*, *revised*. McMichael
Canadian
Collection
continued

(2) The Corporation shall have a seal.

Seal

(3) The fiscal year of the Corporation commences on the 1st day of April in each year and ends on the 31st day of March in the following year. Fiscal year

(4) The *Corporations Act* does not apply to the Corporation. 1972, c. 134, s. 2, *part*. R.S.O. 1980,
c. 95, does
not apply

3.—(1) Subject to section 18, the Lieutenant Governor in Council shall appoint the trustees of the Corporation who shall be the members of the Corporation from time to time and its board of trustees. Appoint-
ments to
the Board

Number of trustees	(2) The Board shall consist of not fewer than five and not more than nine trustees at any one time.
Term of office	(3) A trustee may be appointed for a term not exceeding three years, but may be reappointed for one or more further terms.
Chairman and vice-chairman	(4) The Lieutenant Governor in Council shall designate one of the trustees as chairman and one of the trustees as vice-chairman of the Board.
Chairman to preside	(5) The chairman shall preside at all meetings of the Board, and, in his absence or if the office of chairman is vacant, the vice-chairman has all the powers and shall perform the duties of the chairman.
Quorum	(6) A majority of the trustees for the time being constitutes a quorum of the Board. 1972, c. 134, s. 3.
Powers of Board	4.—(1) The affairs of the Corporation shall be under the management and control of the Board, and the Board has all the powers necessary or convenient to perform its duties or to achieve the objects of the Corporation.
By-laws	(2) The Board may make by-laws regulating its proceedings and generally for the conduct and management of its internal affairs, and the <i>Regulations Act</i> does not apply to any such by-law.
R.S.O. 1980, c. 446	
Committees	(3) A by-law establishing a committee of the Board may delegate to the committee such powers and duties of the Board as are determined in the by-law.
Director	(4) Subject to section 18, the Board shall, with the approval of the Minister, appoint a director who may, but need not necessarily, be a trustee of the Board, and may with the approval of the Minister, remove the director, and the director shall be responsible for the management and administration of the Corporation, subject to the supervision and direction of the Board.
Staff	(5) The Board may appoint such employees as it considers necessary from time to time for the proper conduct of the business of the Corporation, and may fix and pay their salaries or other remuneration and benefits and provide for the retirement and superannuation of such employees. 1972, c. 134, s. 4.
Corporation Crown agency	5.—(1) The Corporation is for all purposes an agent of Her Majesty, and its powers may be exercised only as an agent of Her Majesty.

(2) All real and personal property acquired by the Corporation is the property of Her Majesty, and title thereto and ownership thereof may be vested in the name of Her Majesty or in the name of the Corporation. 1972, c. 134, s. 5.

6. The objects of the Corporation are,

Objects

- (a) to hold, manage, control, maintain, exhibit, display, develop and stimulate interest in the collection for the benefit of the public;
- (b) to hold and preserve the lands described in the Schedule as a permanent site for a public gallery and related facilities for the collection;
- (c) to maintain and operate the gallery mentioned in clause (b); and
- (d) to hold, manage, control, maintain, preserve, administer and develop the lands of the Corporation in conjunction with the operation of the gallery and for the benefit of the public. 1972, c. 134, s. 6.

7. The Board shall ensure that the art works and objects acquired from time to time as part of the collection are not inconsistent with the general character of the collection at the time of such acquisition. 1972, c. 134, s. 7.

Nature of art works, etc., acquired

8. The Corporation may,

Powers of Corporation

- (a) acquire by purchase, gift, grant, bequest, lease or otherwise and hold in its own name any money and any property;
- (b) expend, administer or dispose of any such money or property in furtherance of its objects, subject to the terms, if any, upon which such money or property was given, granted, bequeathed, leased or otherwise acquired by the Corporation;
- (c) with the approval of the Lieutenant Governor in Council, erect buildings and structures on the lands of the Corporation;
- (d) establish and operate facilities on the lands of the Corporation for,
 - (i) the sale of food, beverages, books, art reproductions, artifacts and other wares, and
 - (ii) the parking of vehicles;

- (e) with the approval of the Lieutenant Governor in Council, establish and collect general admission fees and special admission fees for any exhibition, program or special event conducted by the Corporation, and fees for the parking of vehicles;
- (f) loan any part of the collection to any person for public exhibition, provided that at all times a substantial part of the collection shall be on exhibition at the Corporation gallery;
- (g) conduct exhibitions, programs and special events on the lands of the Corporation;
- (h) borrow money for the purposes of carrying out the objects of the Corporation where a guarantee is provided under section 13;
- (i) enter into agreements in furtherance of the objects of the Corporation or for the purpose of carrying out any of the powers of the Corporation;
- (j) provide for the interment, in that portion of the lands of the Corporation established as a cemetery under the *Cemeteries Act*, of the remains of any artist whose works are included in the collection, or of the remains of the spouse of any such artist. 1972, c. 134, s. 8.

R.S.O. 1980,
c. 59

Special
fund

9.—(1) The Board shall establish and maintain a special fund which shall consist of,

- (a) all moneys received by the Corporation expressly for allocation thereto;
- (b) all moneys received from the sale of any art work belonging to the Corporation;
- (c) all net profits from the sale of books, art reproductions, copyrights, artifacts and other wares by the Corporation; and
- (d) the income of the special fund.

Investment

(2) The Board may invest the moneys deposited in the special fund but only in such classes of securities as trustees are permitted to invest in under the laws of Ontario.

Expenditures

(3) The Corporation shall not expend any of the moneys in the special fund except for investment under subsection (2) or for the acquisition of art works and objects for the collection. 1972, c. 134, s. 9.

10.—(1) The Board shall establish and maintain a general ^{General fund} fund which shall consist of grants receivable under this Act and such moneys, other than moneys referred to in subsection 9 (1), received by the Corporation from any source.

(2) The Corporation may disburse, expend or otherwise deal ^{Expenditures} with any of its general fund for the purposes of the objects of the Corporation, other than that of acquiring works of art and objects for the collection, and for the purpose of defraying any expenses incurred in carrying out such objects. 1972, c. 134, s. 10.

11.—(1) Subject to subsection (2), a trustee shall not ^{Remuneration, trustees} receive remuneration for his services but shall be reimbursed out of the general fund of the Corporation for his proper travelling and other expenses incurred in the work of the Board.

(2) The director of the Corporation shall receive such ^{Idem, director} remuneration as the Lieutenant Governor in Council may determine, payable out of the general fund of the Corporation. 1972, c. 134, s. 11.

12. The Minister may make grants of money to the ^{Grants} Corporation upon such terms and conditions as he considers advisable. 1972, c. 134, s. 12.

13.—(1) The Lieutenant Governor in Council may, upon ^{Guarantee of loans} such terms as he considers proper, agree to guarantee and may guarantee the payment of any loan to the Corporation, or any part thereof together with interest thereon, borrowed for the purpose of carrying out the objects of the Corporation.

(2) The form and manner of the guarantee shall be such ^{Form of guarantee} as the Lieutenant Governor in Council approves, and the guarantee shall be signed by the Treasurer of Ontario or such other officer or officers as are designated by the Lieutenant Governor in Council, and upon being so signed, the Province of Ontario is liable for the payment of the loan or part thereof and interest thereon guaranteed according to the terms of the guarantee.

(3) The Lieutenant Governor in Council may make arrange- ^{Payment of guarantee} ments for supplying the money necessary to fulfil the requirements of any guarantee and to advance the amount necessary for that purpose out of the public funds of the Province. 1972, c. 134, s. 13.

14. The real and personal property vested in the Corpora- ^{Tax exemption} tion and any lands and premises leased to or occupied by the Corporation are not liable to taxation for municipal or school

purposes so long as they are actually used and occupied for the purposes of the Corporation. 1972, c. 134, s. 14.

Audit

15. The accounts and financial transactions of the Corporation shall be audited annually by the Provincial Auditor, and a report of the audit shall be made to the Board and to the Minister. 1972, c. 134, s. 15.

Annual report

16. The Board shall make a report annually to the Minister upon the affairs of the Corporation, and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. 1972, c. 134, s. 16.

Regulations

17.—(1) The Lieutenant Governor in Council may make regulations,

- (a) designating any lands acquired by the Corporation as lands of the Corporation;
- (b) governing and regulating the conduct of persons on the lands of the Corporation;
- (c) governing and regulating vehicular traffic on the lands of the Corporation, and prohibiting the use of any class or classes of vehicles thereon; and
- (d) for any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Offence

(2) Any person who contravenes any provision of the regulations is guilty of an offence and on conviction is liable to a fine not exceeding \$500. 1972, c. 134, s. 17.

Robert
McMichael
and Signe
McMichael

18. Notwithstanding anything in this Act,

- (a) Robert McMichael shall be a trustee of the Board until such time as he is unable or unwilling to be a trustee;
- (b) Signe McMichael shall be a trustee of the Board until such time as she is unable or unwilling to be a trustee;
- (c) the said Robert McMichael shall be the director and shall hold such office during pleasure of the Lieutenant Governor in Council;
- (d) the said Robert McMichael and Signe McMichael are each entitled for life to reside in the premises situate

on the lands described in the Schedule, and the Board shall make due provision therefor; and

- (e) the said Robert McMichael and Signe McMichael are each entitled to have their remains interred in the cemetery referred to in clause 8 (j), and the Board shall make provision therefor. 1972, c. 134, s. 18.

19. The moneys required for the purposes of section 12 shall ^{Moneys} be paid out of the moneys appropriated therefor by the Legislature. 1972, c. 134, s. 19.

SCHEDULE

ALL AND SINGULAR that certain parcel or tract of land and premises, situate, lying and being in the Town of Vaughan, in The Regional Municipality of York (formerly in the Township of Vaughan, in the County of York) and Province of Ontario, being composed of part of Lot Twenty-three in the Eighth concession in the said Town of Vaughan, the boundaries of which said parcel may more particularly be described as follows, and

PREMISING that the Eastern limit of the said Lot Twenty-three has a governing bearing of North $8^{\circ}24'00''$ West, and relating all bearings quoted herein thereto;

PARCEL "A"

COMMENCING at an iron bar planted in the existing Northerly limit of the said Lot Twenty-three, distant 716.66 feet measured Westerly thereon from a standard iron bar planted marking the Northeasterly angle of the said Half Lot;

THENCE South $73^{\circ}43'40''$ West along the last said existing limit 715.16 feet, more or less, to an iron tube found planted at an angle therein;

THENCE South $72^{\circ}32'50''$ West continuing along the last said limit 73.12 feet, more or less, to an iron tube found planted at the intersection thereof with the centre line of the easement to The Hydro-Electric Power Commission of Ontario;

THENCE South $1^{\circ}40'10''$ East along the said centre line 698.26 feet to an iron bar planted;

THENCE North $81^{\circ}22'20''$ East 587.54 feet to an iron bar planted;

THENCE North $42^{\circ}54'30''$ East 450.11 feet to an iron bar planted;

THENCE North $16^{\circ}45'30''$ West 524.69 feet, more or less, to the point of commencement.

SUBJECT TO AT ALL TIMES an easement in favour of The Hydro-Electric Power Commission of Ontario over the Westerly 75.00 feet, measured at right angles of the hereinbefore described Parcel "A" and which said Parcel contains by admeasurement 13,801 acres more or less, as shown on Plan of Survey by A. Death, OLS, January 8, 1959.

PARCEL "B"

COMMENCING at an iron tube found planted in the centre line of the easement to The Hydro-Electric Power Commission of Ontario, which line defines the Westerly limit of the above described parcel, the said iron tube is distant 679.48 feet measured Northerly therealong said centre line from its intersection with the existing limit between Lots Twenty-two and Twenty-three;

THENCE South $72^{\circ}30'40''$ West, 1840.67 feet to an iron tube found planted in the Easterly limit of the Kleinberg Road;

THENCE North $30^{\circ}07'20''$ West along the last said limit 25.64 feet to an iron tube found planted in the same;

THENCE North $72^{\circ}30'40''$ East, 1853.35 feet to an iron tube found planted in the centre line of said Hydro-Electric Power Commission easement;

THENCE South $1^{\circ}40'10''$ East along the last said line, 25.98 feet, more or less, to the point of commencement;

SUBJECT TO AT ALL TIMES an easement in favour of The Hydro-Electric Power Commission of Ontario over the Easterly 75.00 feet, measured at right angles of the hereinbefore described Parcel "B" and which said parcel is shown on Plan of Survey by A. Death, OLS, January 8, 1959.

1972, c. 134, Sched.

CHAPTER 260

Meat Inspection Act (Ontario)

1. In this Act,

- (a) "animal" means a domestic animal the meat of which is intended to be used for human consumption, and includes poultry; Interpre-
tation
- (b) "Board" means the Agricultural Licensing and Registration Review Board under the *Ministry of Agriculture and Food Act*; R.S.O. 1980,
c. 270
- (c) "Director" means the Director of the Veterinary Services Branch of the Ministry of Agriculture and Food;
- (d) "establishment" means an establishment operating under the *Meat Inspection Act* (Canada); R.S.C. 1970,
c. M-7
- (e) "inspector" means an inspector appointed under this Act;
- (f) "licence" means a licence under this Act;
- (g) "meat product" means any product processed or derived in whole or in part from meat and intended to be used as food for human consumption;
- (h) "Minister" means the Minister of Agriculture and Food;
- (i) "plant" means a premises where animals are slaughtered, and includes any portion of the premises in which meat products are produced, processed, handled or stored;
- (j) "poultry" means chickens, ducks, geese, turkeys and other birds;
- (k) "regulations" means the regulations made under this Act;
- (l) "slaughter" means slaughter for the purpose of processing meat into food for human consumption. R.S.O. 1970, c. 266, s. 1; 1971, c. 50, s. 56 (1); 1972, c. 1, s. 1; 1972, c. 81, s. 1; 1978, c. 100, s. 14 (1):

Slaughtering
of animals

2.—(1) Except as provided in the regulations, no person shall slaughter an animal unless the animal has been inspected by an inspector immediately before the time of slaughter.

Idem

(2) No person shall slaughter an animal, except in the manner and by the devices prescribed in the regulations.

Sale, etc.,
of meat

(3) Except as provided in the regulations, no person shall sell, offer for sale, transport or deliver to any person meat unless,

(a) the animal from which the meat was obtained was inspected by an inspector as provided in subsection (1);

(b) the slaughter of the animal took place at a plant that complies with this Act and the regulations, or at an establishment; and

(c) the meat is stamped with an inspection legend or is labelled, as provided in the regulations. R.S.O. 1970, c. 266, s. 2.

Production,
etc., of meat
products

(4) No person shall engage in the production, processing, handling or storage of a meat product at a plant except in accordance with the regulations. 1972, c. 81, s. 2.

Licensing

3. No person shall engage in the business of operating a plant other than an establishment without a licence therefor from the Director. R.S.O. 1970, c. 266, s. 3 (1).

Licence,
issue

4.—(1) The Director shall issue a licence to a person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee unless, after a hearing, he is of opinion that,

(a) the past conduct of the applicant or, where the applicant is a corporation, of its officers or directors, affords reasonable grounds for belief that the business of operating a plant pursuant to the licence will not be carried on in accordance with law;

(b) the applicant does not possess or will not have available all premises, facilities and equipment necessary to engage in the business of operating a plant in accordance with this Act and the regulations; or

- (c) the applicant is not in a position to observe or carry out the provisions of this Act and the regulations.

(2) Subject to section 5, the Director shall renew a licence on application therefor by the licensee in accordance with this Act and the regulations and payment of the prescribed fee. 1971, c. 50, s. 56 (3), *part*. Renewal

5.—(1) The Director may refuse to renew or may suspend or revoke a licence if, after a hearing, he is of opinion that, Refusal to renew,
suspension
or revocation

- (a) the premises, facilities and equipment used in the business of operating a plant pursuant to the licence do not comply with this Act and the regulations;

- (b) the licensee or, where the licensee is a corporation, any officer, director or servant thereof, has contravened or has permitted any person under his control or direction in connection with his business of operating a plant, to contravene any provision of this Act or the regulations or of any other Act or the regulations thereunder, or of any law applying to the carrying on of the business of operating a plant or the conditions for licensing and such contravention warrants such refusal to renew, suspension or revocation of the licence; or

- (c) any other ground for refusal to renew, suspension or revocation specified in the regulations exists.

(2) Notwithstanding subsection (1), the Director, by notice to a licensee and without a hearing, may provisionally refuse to renew or suspend the licensee's licence where in the Director's opinion it is necessary to do so for the immediate protection of the safety or health of any person or animal or the public and the Director so states in such notice giving his reasons therefor, and thereafter the Director shall hold a hearing to determine whether renewal of the licence should be refused or whether the licence should be further suspended or revoked under this Act and the regulations. Provisional
suspension,
etc.

(3) Subject to subsection (2), where, within the time prescribed therefor or, if no time is prescribed, before expiry of his licence, a licensee has applied for a renewal of his licence and paid the prescribed fee, and has observed or carried out the provisions of this Act and the regulations, his existing licence shall be deemed to continue until he has Continuation
of licence
pending
renewal

received the decision of the Director on his application for renewal. 1971, c. 50, s. 56 (3), *part.*

Notice of
hearing

6.—(1) The notice of a hearing by the Director under section 4 or 5 shall afford to the applicant or licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence.

Examination
of docu-
mentary
evidence

(2) An applicant or licensee who is a party to proceedings in which the Director holds a hearing shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. 1971, c. 50, s. 56 (3), *part.*

Variation of
decision
by Director

7. Where the Director has refused to issue or renew or has suspended or revoked a licence pursuant to a hearing, he may, at any time of his own motion or on the application of the person who was the applicant or licensee, vary or rescind his decision, but the Director shall not vary or rescind his decision adversely to the interest of any person without holding a rehearing to which such person is a party and may make such decision pursuant to such rehearing as he considers proper under this Act and the regulations. 1971, c. 50, s. 56 (3), *part.*

Appeal to
Board

8.—(1) Where the Director refuses to issue or renew or suspends or revokes a licence, the applicant or licensee may by written notice delivered to the Director and filed with the Board within fifteen days after receipt of the decision of the Director appeal to the Board.

Extension
of time
for appeal

(2) The Board may extend the time for the giving of notice by an applicant or licensee under subsection (1), either before or after expiration of such time, where it is satisfied that there are *prima facie* grounds for appeal and that there are reasonable grounds for applying for the extension.

Powers of
Board

(3) Where an applicant or licensee appeals to the Board under this section, the Board shall hear the appeal by way of a hearing *de novo* to determine whether the licence should be issued, renewed, suspended or revoked and may, after the hearing, confirm or alter the decision of the Director or direct the Director to do any act he is authorized to do under this Act and as the Board considers proper and, for

such purpose, the Board may substitute its opinion for that of the Director.

(4) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Director, unless the Director otherwise directs, the decision of the Director is effective until the appeal is disposed of. 1971, c. 50, s. 56 (3), *part*.

Effect of
decision
pending
disposal
of appeal

9.—(1) The Director, the appellant and such other persons as the Board may specify are parties to the proceedings before the Board under this Act.

Parties

(2) Members of the Board assigned to render a decision after a hearing shall not have taken part prior to the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but such members may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Members
making
decision
not to
have taken
part in
investigation,
etc.

(3) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

Recording
of evidence

(4) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

Findings
of fact

R.S.O. 1980,
c. 484

(5) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision. 1971, c. 50, s. 56 (3), *part*.

Only
members
at hearing
to participate
in decision

10.—(1) Any party to the hearing before the Board may appeal from the decision of the Board to the Divisional Court in accordance with the rules of court.

Appeal
to court

(2) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section.

Minister
entitled to
be heard

Record to
be filed
in court

(3) The chairman of the Board shall file with the Registrar of the Supreme Court the record of the proceedings before the Board which, together with a transcript of the evidence before the Board if it is not part of the Board's record, shall constitute the record in the appeal.

Powers of
court on
appeal

(4) An appeal under this section may be made on any question that is not a question of fact alone and the court may confirm or alter the decision of the Board or direct the Director to do any act he is authorized to do under this Act or may refer the matter back to the Board for reconsideration by the Board as the court considers proper, and the court may substitute its opinion for that of the Director or the Board.

Effect of
decision of
Board
pending
disposal
of appeal

(5) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Board, unless the Board otherwise directs, the decision of the Board is effective until the appeal is disposed of. 1971, c. 50, s. 56 (3), *part*.

Inspectors

11.—(1) The Minister may appoint a chief inspector and such other inspectors as he considers necessary to carry out and enforce this Act and the regulations.

Certificate
of appoint-
ment

(2) The production by an inspector of a certificate of his appointment purporting to be signed by the Minister is admissible in evidence as *prima facie* proof of his appointment without further proof of the signature or authority of the Minister. R.S.O. 1970, c. 266, s. 4 (1, 2).

Powers

(3) Subject to subsection (4), for the purpose of carrying out his duties under this Act, the Director or an inspector may enter any premises or building and may inspect the premises or building and any animal or meat therein. R.S.O. 1970, c. 266, s. 4 (3); 1971, c. 50, s. 56 (4).

Power
to enter
dwelling
R.S.O. 1980,
c. 400

(4) Except under the authority of a warrant under section 142 of the *Provincial Offences Act*, the Director or an inspector shall not enter any part of a dwelling without the consent of the occupant. 1971, c. 50, s. 56 (5).

Obstruction
of Director
or inspector

12. No person shall hinder or obstruct the Director or an inspector in the course of his duties or furnish him with false information, or refuse to furnish him with information. R.S.O. 1970, c. 266, s. 5.

Agreements
with Canada

13. Subject to the approval of the Lieutenant Governor in Council, the Minister may enter into agreements with the Government of Canada, or any agency thereof, providing for,

- (a) the more efficient carrying out within Ontario of the purpose and intent of this Act;
- (b) the performance by the Government of Canada, on behalf of the Government of Ontario, of functions and services under this Act that are the responsibility of the Government of Ontario; and
- (c) the payment of money required for functions and services performed by the Government of Canada under clause (b). R.S.O. 1970, c. 266, s. 6.

14. Where the provisions of any by-law of a local municipality are in conflict with this Act or the regulations, the provisions of this Act and the regulations prevail. R.S.O. 1970, c. 266, s. 7.

Conflict
with by-law
of local
municipality

15.—(1) Every medical officer of health is *ex officio* an inspector under this Act within the area under his jurisdiction.

Medical
officer of
health,
ex officio
inspector

(2) A person appointed by the council of a local municipality or by a health unit as an inspector under the direction of the medical officer of health of the local municipality or health unit, as the case may be, is *ex officio* an inspector under this Act within the area under the jurisdiction of the medical officer of health. R.S.O. 1970, c. 266, s. 8.

Municipal
inspectors

16. Every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction is liable for a first offence to a fine of not more than \$500 or to imprisonment for a term of not more than six months, or to both fine and imprisonment, and for a subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both. R.S.O. 1970, c. 266, s. 9.

Offences

17. The Lieutenant Governor in Council may make regulations,

Regulations

- (a) providing for the issue, renewal, suspension or revocation of or refusal to issue or renew licences and prescribing the fees payable for licences or the renewal thereof;
- (b) prescribing conditions for licensing;
- (c) prescribing the powers and duties of the Director and of inspectors or any class thereof;

- (d) respecting the facilities and equipment to be provided and maintained at plants and the operation of plants;
- (e) respecting cleanliness and sanitation at plants;
- (f) requiring and governing the detention and disposal of any animal or meat thereof and prescribing the procedures therefor;
- (g) requiring and governing the detention and disposal of any meat product at a plant and prescribing the procedures therefor;
- (h) prescribing the manner of, and the devices to be used in, the slaughter of animals;
- (i) respecting the transportation and delivery of meat or meat products from a plant;
- (j) prescribing the records to be made and kept by operators of plants;
- (k) providing for the exemption from the Act or the regulations, or any provision thereof, of any person or class of persons, or of any animal or class of animals and the meat thereof, and prescribing the terms and conditions therefor;
- (l) prescribing the terms and conditions under which animals and meat and meat products may be inspected at any plant and the fees payable for inspections;
- (m) prescribing standards for any class or variety of meat product;
- (n) providing for the taking at a plant of samples of meat or any meat product at the expense of the owner for the purpose of testing;
- (o) providing for the stamping with an inspection legend at a plant of meat that is fit for human consumption;
- (p) providing for the labelling at a plant of meat that is fit for human consumption;
- (q) providing for the labelling at a plant of meat products;
- (r) prescribing forms and providing for their use;

- (s) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 266, s. 10; 1972, c. 81, s. 3.

CHAPTER 261

Mechanics' Lien Act

1.—(1) In this Act,

Interpre-
tation

- (a) “completion of the contract” means substantial performance, not necessarily total performance, of the contract;
- (b) “contractor” means a person contracting with or employed directly by the owner or his agent for the doing of work or the placing or furnishing of materials for any of the purposes mentioned in this Act;
- (c) “Crown” includes Crown agencies to which the *Crown Agency Act* applies;
- (d) “estate or interest in land” includes a statutory right given or reserved to the Crown to enter any lands or premises of any person or public authority for the purpose of doing any work, construction, repair or maintenance in, upon, through, over or under any such lands or premises;
- (e) “materials” includes every kind of movable property;
- (f) “owner” includes any person and corporation, including the Crown, a municipal corporation and a railway company, having any estate or interest in the land upon which or in respect of which work is done or materials are placed or furnished, at whose request, and
 - (i) upon whose credit, or
 - (ii) on whose behalf, or
 - (iii) with whose privity or consent, or
 - (iv) for whose direct benefit,

R.S.O. 1980,
c. 106

work is done or materials are placed or furnished and all persons claiming under him or it whose rights are acquired after the work in respect of which the lien is claimed is commenced or the materials placed

or furnished have been commenced to be placed or furnished;

- (g) "public work" means the property of the Crown and includes land in which the Crown has an estate or interest, and also includes all works and properties acquired, constructed, extended, enlarged, repaired, equipped or improved at the expense of the Crown, or for the acquisition, construction, repairing, equipping, extending, enlarging or improving of which any public money is appropriated by the Legislature, but not any work for which money is appropriated as a subsidy only;
- (h) "subcontractor" means a person not contracting with or employed directly by the owner or his agent for any of the purposes mentioned in this Act, but contracting with or employed by a contractor or, under him, by another subcontractor;
- (i) "wages" means the money earned by a workman for work done by time or as piece work, and includes all monetary supplementary benefits, whether by statute, contract or collective bargaining agreement;
- (j) "workman" means a person employed for wages in any kind of labour, whether employed under a contract of service or not. R.S.O. 1970, c. 267, s. 1 (1); 1975, c. 43, s. 1, *revised*.

Work
includes
service

(2) In this Act, the expression "the doing of work" includes the performance of a service, and corresponding expressions have corresponding meanings.

Substantial
performance

(3) For the purposes of this Act, a contract shall be deemed to be substantially performed,

- (a) when the work or a substantial part thereof is ready for use or is being used for the purpose intended; and
- (b) when the work to be done under the contract is capable of completion or correction at a cost of not more than,

- (i) 3 per cent of the first \$250,000 of the contract price,
- (ii) 2 per cent of the next \$250,000 of the contract price, and
- (iii) 1 per cent of the balance of the contract price.

(4) For the purpose of this Act, where the work or a substantial part thereof is ready for use or is being used for the purpose intended and where the work cannot be completed expeditiously for reasons beyond the control of the contractor, the value of the work to be completed shall be deducted from the contract price in determining substantial performance. R.S.O. 1970, c. 267, s. 1 (2-4).

2.—(1) Subject to subsection 6 (2), this Act binds the Crown but does not apply in respect of work under a contract as defined in the *Ministry of Transportation and Communications Creditors Payment Act* and to which that Act applies.

Idem
Application
of Act

R.S.O. 1980,
c. 290

(2) Section 7 of the *Proceedings Against the Crown Act* does not apply in respect of proceedings against the Crown under this Act. 1975, c. 43, s. 2.

Application
of
R.S.O. 1980,
c. 393

GENERAL

3.—(1) All sums received by a builder, contractor or subcontractor on account of the contract price constitute a trust fund in his hands for the benefit of the owner, builder, contractor, subcontractor, Workmen's Compensation Board, workmen, and persons who have supplied materials on account of the contract or who have rented equipment to be used on the contract site, and the builder, contractor or subcontractor, as the case may be, is the trustee of all such sums so received by him and he shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust until all workmen and all persons who have supplied materials on the contract or who have rented equipment to be used on the contract site and all subcontractors are paid for work done or materials supplied on the contract and the Workmen's Compensation Board is paid any assessment with respect thereto.

Trust funds
in hands of
contractors

(2) Notwithstanding subsection (1), where a builder, contractor or subcontractor has paid in whole or in part for any materials supplied on account of the contract or for any rented equipment or has paid any workman who has performed any work or any subcontractor who has placed or

Exception

furnished any materials in respect of the contract, the retention by such builder, contractor or subcontractor of a sum equal to the sum so paid by him shall be deemed not to be an appropriation or conversion thereof to his own use or to any use not authorized by the trust.

Trust funds
in hands of
owners

(3) Where a sum becomes payable under a contract to a contractor by an owner on the certificate of a person authorized under the contract to make such a certificate, an amount equal to the sum so certified that is in the owner's hands or received by him at any time thereafter shall, until paid to the contractor, constitute a trust fund in the owner's hands for the benefit of the contractor, subcontractor, Workmen's Compensation Board, workmen, and persons who have supplied materials on account of the contract or who have rented equipment to be used on the contract site, and the owner shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust until all workmen and all persons who have supplied materials on the contract or who have rented equipment to be used on the contract site and all contractors and subcontractors are paid for work done or materials supplied on the contract and the Workmen's Compensation Board is paid any assessment with respect thereto. R.S.O. 1970, c. 267, s. 2 (1-3).

Advances on
mortgage,
etc., a trust
fund
R.S.O. 1980,
c. 303

(4) All sums received by an owner, other than the Crown, a municipality as defined in the *Municipal Affairs Act* or a metropolitan or regional municipality or a local board thereof, which are to be used in the financing, including the purchase price of the land and the payment of prior encumbrances, of a building, structure or work, constitute, subject to the payment of the purchase price of the land and prior encumbrances, a trust fund in the hands of the owner for the benefit of the persons mentioned in subsection (1), and, until the claims of all such persons have been paid, the owner shall not appropriate or convert any part thereof to his own use or to any use not authorized by the trust. R.S.O. 1970, c. 267, s. 2 (4); 1972, c. 1, s. 104 (5); 1975, c. 43, s. 3.

Exception

(5) Notwithstanding subsection (4), where an owner has himself paid in whole or in part for any work done, for any materials placed or furnished or for any rented equipment, the retention by him from any moneys received from the lender under subsection (4) of a sum equal to the sum so paid by him shall be deemed not to be an appropriation or conversion thereof to his own use or to any use not authorized by the trust.

Protection
for money
lenders

(6) Notwithstanding anything in this section, where money is lent to a person upon whom a trust is imposed by this

section and is used by him to pay in whole or in part for any work done, for any materials placed or furnished or for any rented equipment, trust moneys may be applied to discharge the loan to the extent that the lender's money was so used by the trustee, and any sum so applied shall be deemed not to be an appropriation or conversion to the trustee's own use or to any use not authorized by the trust.

(7) Every person upon whom a trust is imposed by this section who knowingly appropriates or converts any part of any trust moneys referred to in subsection (1), (3) or (4) to his own use or to any use not authorized by the trust is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both, and every director or officer of a corporation who knowingly assents to or acquiesces in any such offence by the corporation is guilty of such offence, in addition to the corporation, and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than two years, or to both. R.S.O. 1970, c. 267, s. 2 (5-7).

Offence and penalty

4. No action to assert any claim to trust moneys referred to in section 3 shall be commenced against a lender of money to a person upon whom a trust is imposed by that section except,

Limit of time for asserting claims to trust moneys

- (a) in the case of a claim by a contractor or subcontractor in cases not provided for in clauses (b), (c) and (d), within nine months after the completion or abandonment of the contract or subcontract;
- (b) in the case of a claim for materials, within nine months after the placing or furnishing of the last material;
- (c) in the case of a claim for services, within nine months after the completion of the service; or
- (d) in the case of a claim for wages, within nine months after the last work was done for which the claim is made. R.S.O. 1970, c. 267, s. 3.

5.—(1) Every agreement, oral or written, express or implied, on the part of any workman that this Act does not apply to him or that the remedies provided by it are not available for his benefit is void.

Agreements waiving application of Act are void

(2) Subsection (1) does not apply.

Exception

(a) to a manager, officer or foreman; or

(b) to any person whose wages are more than \$50 a day.

Effect upon
third party
of agreement
waiving lien

(3) No agreement deprives any person otherwise entitled to a lien under this Act, who is not a party to the agreement, of the benefit of the lien, but it attaches, notwithstanding such agreement. R.S.O. 1970, c. 267, s. 4.

CREATION OF LIENS

General
right to a
lien

6.—(1) Unless he signs an express agreement to the contrary and in that case subject to section 5, any person who does any work upon or in respect of, or places or furnishes any materials to be used in, the making, constructing, erecting, fitting, altering, improving or repairing of any land, building, structure or works or the appurtenances to any of them for any owner, contractor or subcontractor by virtue thereof has a lien for the price of the work or materials upon the estate or interest of the owner in the land, building, structure or works and appurtenances and the land occupied thereby or enjoyed therewith, or upon or in respect of which the work is done, or upon which the materials are placed or furnished to be used, limited, however, in amount to the sum justly due to the person entitled to the lien and to the sum justly owing, except as herein provided, by the owner, and the placing or furnishing of the materials to be used upon the land or such other place in the immediate vicinity of the land designated by the owner or his agent is good and sufficient delivery for the purpose of this Act, but delivery on the designated land does not make such land subject to a lien. R.S.O. 1970, c. 267, s. 5 (1).

Where lien
against
Crown or
municipality

(2) Where the land or premises upon or in respect of which any work is done or materials are placed or furnished is,

(a) a public street or highway owned by a municipality;
or

(b) a public work,

the lien given by subsection (1) does not in any event attach to such land or premises but shall instead constitute a charge on amounts directed to be retained by section 12, and the provisions of this Act shall be construed, with necessary modifications, to have effect without requiring the registration or enforcement of a lien or a claim for lien against such land or premises. 1975, c. 43, s. 4.

Lien
attaches
where
materials
incorporated
into
building

(3) The lien given by subsection (1) attaches as therein set out where the materials delivered to be used are incor-

porated into the land, building, structure or works, notwithstanding that the materials may not have been delivered in strict accordance with subsection (1).

(4) In subsection (1), "agent" includes the contractor or subcontractor for whom the materials are placed or furnished, unless the person placing or furnishing the materials has had actual notice from the owner to the contrary.

Interpretation

(5) A person who rents equipment to an owner, contractor or subcontractor for use on a contract site shall be deemed for the purposes of this Act to have performed a service for which he has a lien for the price of the rental of the equipment used on the contract site, limited, however, in amount to the sum justly owed and due to the person entitled to the lien from the owner, builder, contractor or subcontractor in respect of the rental of the equipment. R.S.O. 1970, c. 267, s. 5 (3-5).

Lien for rented equipment

7. Where work is done or materials are placed or furnished to be used upon or in respect of the land of a married woman, or in which she has an interest, with the privity or consent of her husband, he shall be presumed conclusively to be acting as her agent as well as for himself for the purposes of this Act unless before doing the work or placing or furnishing the materials the person doing the work or placing or furnishing the materials has had actual notice to the contrary. R.S.O. 1970, c. 267, s. 6, *revised*.

When husband's interest liable for work done or materials furnished on land of spouse

8.—(1) Where the estate or interest upon which the lien attaches is leasehold, the fee simple is also subject to the lien if the person doing the work or placing or furnishing the materials gives notice in writing, by personal service, to the owner in fee simple or his agent of the work to be done or materials to be placed or furnished unless the owner in fee simple or his agent within fifteen days thereafter gives notice in writing, by personal service, to such person that he will not be responsible therefor.

Where estate charged is leasehold

(2) No forfeiture or attempted forfeiture of the lease on the part of the landlord, or cancellation or attempted cancellation of the lease except for non-payment of rent, deprives any person otherwise entitled to a lien of the benefit of the lien, but the person entitled to the lien may pay any rent accruing after he becomes so entitled, and the amount so paid may be added to his claim.

Forfeiture or cancellation of lease, effect of on lienholder

(3) Where the land and premises upon or in respect of which any work is done or materials are placed or furnished are encumbered by a mortgage or other charge that was

Prior mortgages

registered in the proper land registry office before any lien under this Act arose, the mortgage or other charge has priority over all liens under this Act to the extent of the actual value of the land and premises at the time the first lien arose, such value to be ascertained by the judge or officer having jurisdiction to try an action under this Act.

When first
lien arose

(4) The time at which the first lien arose shall be deemed to be the time at which the first work was done or the first materials placed or furnished, irrespective of whether a claim for lien in respect thereof is registered or enforced and whether or not such lien is before the court.

Future
advances

(5) Any mortgage existing as a valid security, notwithstanding that it is a prior mortgage within the meaning of subsection (3), may also secure future advances, subject to subsection 15 (1).

Registered
agreement
for sale and
purchase of
land has
same priority
as mortgage

(6) A registered agreement for the sale and purchase of land and any moneys *bona fide* secured or payable thereunder has the same priority over a lien as is provided for a mortgage and mortgage moneys in subsections (3) and (5), and for the purposes of this Act the seller shall be deemed to be a mortgagee, and any moneys *bona fide* secured and payable under such agreement shall be deemed to be mortgage moneys *bona fide* secured or advanced. R.S.O. 1970, c. 267, s. 7.

Application
of insurance

9. Where any of the property upon which a lien attaches is wholly or partly destroyed by fire, any money received by reason of any insurance thereon by an owner or prior mortgagee or chargee shall take the place of the property so destroyed and is, after satisfying any prior mortgage or charge in the manner and to the extent set out in subsection 8 (3), subject to the claims of all persons for liens to the same extent as if the money had been realized by a sale of the property in an action to enforce the lien. R.S.O. 1970, c. 267, s. 8.

Limit of
amount of
owner's
liability

10. Save as herein otherwise provided, the lien does not attach so as to make the owner liable for a greater sum than the sum payable by the owner to the contractor. R.S.O. 1970, c. 267, s. 9.

Limit of
lien when
claimed by
other than
contractor

11. Save as herein otherwise provided, where the lien is claimed by any person other than the contractor, the amount that may be claimed in respect thereof is limited to the amount owing to the contractor or subcontractor or other person for whom the work has been done or the materials were placed or furnished. R.S.O. 1970, c. 267, s. 10.

12.—(1) In all cases, the person primarily liable upon a contract under or by virtue of which a lien may arise shall, as the work is done or the materials are furnished under the contract, retain for a period of thirty-seven days after the completion or abandonment of the work done or to be done under the contract 15 per cent of the value of the work and materials actually done, placed or furnished, as mentioned in section 6, irrespective of whether the contract or subcontract provides for partial payments or payment on completion of the work, and the value shall be calculated upon evidence given in that regard on the basis of the contract price or, if there is no specific contract price, on the basis of the actual value of the work or materials. Holdback

(2) Where a contract is under the supervision of an architect, engineer or other person upon whose certificate payments are to be made and thirty-seven days have elapsed after a certificate issued by that architect, engineer or other person to the effect that the subcontract has been completed to his satisfaction has been given to the person primarily liable upon that contract and to the person who became a subcontractor by a subcontract made directly under that contract, the amount to be retained by the person primarily liable upon that contract shall be reduced by 15 per cent of the subcontract price or, if there is no specific subcontract price, by 15 per cent of the actual value of the work done or materials placed or furnished under that subcontract, but this subsection does not operate if and so long as any lien derived under that subcontract is preserved by anything done under this Act. R.S.O. 1970, c. 267, s. 11 (1, 2). Reduction
in amount
retained

(3) Where a certificate issued by an architect, engineer or other person to the effect that a subcontract by which a subcontractor became a subcontractor has been completed to the satisfaction of that architect, engineer or other person has been given to that subcontractor, then, for the purposes of subsections 22 (1), (2) and (3), section 26 and section 27, that subcontract and any materials placed or furnished or to be placed or furnished thereunder and any work done or to be done thereunder shall, so far as concerns any lien thereunder of that subcontractor, be deemed to have been completed or placed or furnished not later than the time at which the certificate was so given. R.S.O. 1970, c. 267, s. 11 (3); 1975, c. 43, s. 5 (1). Idem

(4) Where an architect, engineer or other person neglects or refuses to issue and deliver a certificate upon which payments are to be made under a contract or subcontract, Court order
in lieu of
certificate

the judge or officer having jurisdiction to try an action under this Act, upon application and upon being satisfied that the certificate should have been issued and delivered may, upon such terms and conditions as to costs and otherwise as he deems just, make an order that the work or materials to which the certificate would have related has been done or placed or furnished, as the case may be, and any such order has the same force and effect as if the certificate had been issued and delivered by the architect, engineer or other person. R.S.O. 1970, c. 267, s. 11 (4).

**Charge on
holdback**

(5) The lien is a charge upon the amount directed to be retained by this section in favour of lien claimants whose liens are derived under persons to whom the moneys so required to be retained are respectively payable.

**Charge on
further
amounts
payable in
case of
Crown or
municipality**

(6) Where the lien does not attach to the land by virtue of subsection 6 (2), and a person claiming a lien gives to the owner, or a contractor or subcontractor notice in writing of the lien, the owner, contractor or subcontractor so notified shall retain out of amounts payable to the contractor or subcontractor under whom the lien is derived an amount equal to the amount claimed in the notice. 1975, c. 43, s. 5 (2).

**Payments
made in
good faith
without
notice of
lien**

(7) All payments up to 85 per cent as fixed by subsection (1) and payments permitted as a result of the operation of subsections (2) and (3) made in good faith by an owner to a contractor, or by a contractor to a subcontractor, or by one subcontractor to another subcontractor, before notice in writing of the lien given by the person claiming the lien to the owner, contractor or subcontractor, as the case may be, operate as a discharge *pro tanto* of the lien. R.S.O. 1970, c. 267, s. 11 (6).

**Payment of
percentage
and
discharge
of liens**

(8) Payment of the percentage required to be retained under this section may be validly made so as to discharge all claims in respect of such percentage after the expiration of the period of thirty-seven days mentioned in subsection (1) unless in the meantime the appropriate steps have been taken to preserve the lien as provided by sections 24 and 26, or 25 and 27, as the case may be, in which case the owner may pay the percentage into court in the proceedings, and such payment constitutes valid payment in discharge of the owner to the amount thereof. R.S.O. 1970, c. 267, s. 11 (7); 1975, c. 43, s. 5 (3).

**Amendment
of contracts**

(9) Every contract shall be deemed to be amended in so far as is necessary to be in conformity with this section.

(10) Where the contractor or subcontractor makes default in completing his contract, the percentage required to be retained shall not, as against any lien claimant who by virtue of subsection (5) has a charge thereupon, be applied by the owner, contractor or subcontractor to the completion of the contract or for any other purpose nor to the payment of damages for the non-completion of the contract by the contractor or subcontractor nor in payment or satisfaction of any claim against the contractor or subcontractor. R.S.O. 1970, c. 267, s. 11 (8, 9). Where percentage not to be applied

13. If an owner, contractor or subcontractor makes a payment to any person entitled to a lien under section 6 for or on account of any debt, justly due to him for work done or for materials placed or furnished to be used as therein mentioned, for which he is not primarily liable, and within three days afterwards gives written notice of the payment to the person primarily liable, or his agent, the payment shall be deemed to be a payment on his contract generally to the contractor or subcontractor primarily liable but not so as to affect the percentage to be retained by the owner as provided by section 12. R.S.O. 1970, c. 267, s. 12; 1975, c. 43, s. 6. Payments made directly by owner to persons entitled to lien

14. Every subcontractor is entitled to enforce his lien notwithstanding the non-completion or abandonment of the contract by any contractor or subcontractor under whom he claims. R.S.O. 1970, c. 267, s. 13. Rights of subcontractor

15.—(1) The lien has priority over all judgments, executions, assignments, attachments, garnishments and receiving orders recovered, issued or made after the lien arises, and over all payments or advances made on account of any conveyance or mortgage after notice in writing of the lien has been given to the person making such payments or after registration of a claim for the lien as hereinafter provided, and, in the absence of such notice in writing or the registration of a claim for lien, all such payments or advances have priority over any such lien. Priority of lien

(2) Except where it is otherwise provided by this Act, no person entitled to a lien on any property or money is entitled to any priority or preference over another person of the same class entitled to a lien on such property or money, and each class of lienholders ranks *pari passu* for their several amounts, and the proceeds of any sale shall be distributed among them *pro rata* according to their several classes and rights. Priority among lienholders

(3) Any conveyance, mortgage or charge of or on land given to any person entitled to a lien thereon under Mortgage given to person entitled to lien void as against lienholders

this Act in payment of or as security for any such claim, whether given before or after such lien claim has arisen, shall, as against other parties entitled to liens under this Act, on any such land be deemed to be fraudulent and void. R.S.O. 1970, c. 267, s. 14.

PRIORITY OF WAGES

Priority of
liens for
wages

16.—(1) Every workman whose lien is for wages has priority to the extent of thirty days wages over all other liens derived through the same contractor or subcontractor to the extent of and on the 15 per cent directed to be retained by section 12 to which the contractor or subcontractor through whom the lien is derived is entitled, and all such workmen rank thereon *pari passu*.

Enforcing
lien in
such cases

(2) Every workman is entitled to enforce a lien in respect of any contract or subcontract that has not been completed and, notwithstanding anything to the contrary in this Act, may serve a notice of motion on the proper persons, returnable in four days after service thereof before the judge or officer having jurisdiction to try an action under this Act, that the applicant will on the return of the motion ask for judgment on his claim for lien, registered particulars of which shall accompany the notice of motion duly verified by affidavit.

Calculating
percentage
when
contract not
fulfilled

(3) If the contract has not been completed when the lien is claimed by a workman, the percentage shall be calculated on the value of the work done or materials placed or furnished by the contractor or subcontractor by whom the workman is employed, having regard to the contract price, if any.

Devices to
defeat
priority of
workmen

(4) Every device by an owner, contractor or subcontractor to defeat the priority given to a workman for his wages and every payment made for the purpose of defeating or impairing a lien are void. R.S.O. 1970, c. 267, s. 15.

REGISTRATION

Registration
of claim
for lien

17.—(1) A claim for a lien may be registered in the proper land registry office and shall set out,

- (a) the name and an address for service of the person claiming the lien and of the owner or of the person whom the person claiming the lien, or his agent, believes to be the owner of the land, and of the person for whom the work was or is to be done, or the materials were or are

to be placed or furnished, and the time within which the same was or was to be done or placed or furnished;

(b) a short description of the work done or to be done, or the materials placed or furnished or to be placed or furnished;

(c) the sum claimed as due or to become due;

(d) a description of the land as required by the *Land Titles Act* or the *Registry Act* and the regulations thereunder, as the case may be; and R.S.O. 1980,
cc. 230, 445

(e) the date of expiry of the period of credit if credit has been given.

(2) The claim shall be verified in duplicate by the affidavit of the person claiming the lien, or of his agent or assignee who has a personal knowledge of the matters required to be verified, and the affidavit of the agent or assignee shall state that he has such knowledge. Verification
of claim

(3) When it is desired to register a claim for lien against a railway, it is sufficient description of the land of the railway company to describe it as the land of the railway company, and every such claim shall be registered in the general register in the land registry office for the land registry division within which the lien is claimed to have arisen. Lien
against
railway R.S.O. 1970, c. 267, s. 16.

18.—(1) A claim for lien may include claims against any number of properties, and any number of persons claiming liens upon the same property may unite therein, but, where more than one lien is included in one claim, each claim for lien shall be verified by affidavit as provided in section 17. What may
be included
in claim

(2) The judge or officer trying the action has jurisdiction equitably to apportion against the respective properties the amounts included in any claim or claims under subsection (1). Apportion-
ment of
claims R.S.O. 1970, c. 267, s. 17.

19.—(1) Substantial compliance with sections 17, 18, 23 and 33 is sufficient and no claim for lien is invalidated by reason of failure to comply with any of the requirements of such sections unless, in the opinion of the judge or officer trying the action, the owner, contractor or subcontractor, mortgagee or other person is prejudiced thereby, and then only to the extent to which he is Informality

thereby prejudiced. R.S.O. 1970, c. 267, s. 18 (1); 1975, c. 43, s. 7.

Registration
necessary

(2) Nothing in this section dispenses with the requirement of registration of the claim for lien. R.S.O. 1970, c. 267, s. 18 (2).

Duplicate to
be filed

20. A duplicate of the claim for lien, bearing the registrar's certificate of registration, shall be filed on or before the trial of the action, where the action is to be tried in the Judicial District of York, in the office of the master of the Supreme Court, or, where the action is to be tried elsewhere, in the office of the clerk of the county or district court of the county or district in which the action is to be tried. R.S.O. 1970, c. 267, s. 19.

Status
of lien
claimant
R.S.O. 1980,
cc. 445, 230

21. Where a claim is so registered, the person entitled to a lien shall be deemed to be a purchaser *pro tanto* and a purchaser within the provisions of the *Registry Act* and the *Land Titles Act*, but, except as herein otherwise provided, those Acts do not apply to any lien arising under this Act. R.S.O. 1970, c. 267, s. 20.

Limit of
time for
registration

22.—(1) A claim for lien by a contractor or subcontractor in cases not otherwise provided for may be registered before or during the performance of the contract or of the subcontract or within thirty-seven days after the completion or abandonment of the contract or of the subcontract, as the case may be.

Materials

(2) A claim for lien for materials may be registered before or during the placing or furnishing thereof, or within thirty-seven days after the placing or furnishing of the last material so placed or furnished.

Services

(3) A claim for lien for services may be registered at any time during the performance of the service or within thirty-seven days after the completion of the service.

Wages

(4) A claim for lien for wages may be registered at any time during the doing of the work for which the wages are claimed or within thirty-seven days after the last work was done for which the lien is claimed. R.S.O. 1970, c. 267, s. 21 (1-4).

Crown and
municipal
contracts

23.—(1) Without limiting the generality of subsection 6 (2), where the lien does not attach to the land by virtue of subsection 6 (2), sections 17, 18, 20 and 21 do not apply.

Notice of
claim to
hold back

(2) Where the lien does not attach to the land by virtue of subsection 6 (2), any person who is claiming a lien shall give notice thereof in writing to the owner in the manner hereafter provided.

(3) Where the claim is in respect of a public street or highway owned by a municipality, the notice required to be given to the owner by subsection (2) shall be given to the clerk of the municipality. Service on municipality

(4) Where the claim is in respect of a public work, the notice required by subsection (2) to be given to the owner shall be given to the Ministry or Crown agency for whom the work is done or the materials are placed or furnished, or to such office as is prescribed by the regulations. Service on Crown

(5) The notice required by subsection (2) shall be given within the time allowed for registration under section 22. Time for service

(6) The notice required by subsection (2) may be served personally, or it may be sent by registered mail, in which case the date of mailing shall be deemed to be the date on which the notice was given. Method of service

(7) The notice required shall set out, Contents of notice

(a) the name and address of the person making the claim and of the person for whom the work was done or the materials were placed or furnished, and the time within which the same was done or placed or furnished;

(b) a short description of the work done or the materials placed or furnished;

(c) the sum claimed as due;

(d) the address or a description of the location of the land;

(e) the date of expiry of the period of credit if credit has been given.

(8) The matters set out in the notice shall be verified by the affidavit of the person claiming the lien, or his agent or assignee who has a personal knowledge of the matters, and the affidavit of the agent or assignee shall state that he has such knowledge. 1975, c. 43, s. 9. Verification

EXPIRY AND DISCHARGE

24.—(1) Every lien for which a claim is not registered ceases to exist on the expiration of the time limited in section 22 for the registration thereof. Expiry of liens

Registration
of certificate
of action

(2) Upon an action under this Act being commenced, a certificate thereof shall be registered in the land registry office in which the claim for lien is registered.

Vacating
orders

(3) Where a certificate of action has been registered for two years or more in the land registry office and no appointment has been taken out for the trial of the action, the judge or, in the Judicial District of York, the master, may, upon the application *ex parte* of any interested person, make an order vacating the certificate of action and discharging all liens depending thereon. R.S.O. 1970, c. 267, s. 22.

Not
applicable
to Crown and
municipal
contracts

(4) This section does not apply to liens which, by virtue of subsection 6 (2), do not attach to the land. 1975, c. 43, s. 10.

Time for
claiming
liens against
Crown and
municipalities

25. Where the lien does not attach to the land by virtue of subsection 6 (2), every lien for which notice has not been given as required by section 23 ceases to exist at the expiration of the time limited in section 23 for giving notice of claim thereof. 1975, c. 43, s. 11.

When lien
to cease
if registered
and not
proceeded
upon

26. Every lien for which a claim is registered ceases to exist on the expiration of ninety days after the work has been completed or the materials have been placed or furnished, or after the expiry of the period of credit, where such period is mentioned in the registered claim for lien, unless in the meantime an action is commenced to realize the claim or in which a subsisting claim may be realized, and a certificate is registered as provided by section 24. R.S.O. 1970, c. 267, s. 23 (1).

Expiration
of liens
against
Crown
and muni-
cipalities

27. Every lien which by virtue of subsection 6 (2) does not attach to the land ceases to exist on the expiration of ninety days after,

(a) the work has been completed or abandoned;

(b) the materials have been placed or furnished; or

(c) the expiry of the period of credit, where such period is mentioned in the notice referred to in section 23,

unless in the meantime an action under this Act is commenced to realize the claim or in which a subsisting claim may be realized. 1975, c. 43, s. 13.

Assignment
or death of
lien claimant

28. The rights of a lien claimant may be assigned by an instrument in writing and, if not assigned, upon

his death pass to his personal representative. R.S.O. 1970, c. 267, s. 24.

29.—(1) A claim for lien may be discharged by the registration of a receipt acknowledging payment, Discharge of lien

(a) where made by a lien claimant that is not a corporation, signed by the lien claimant or his agent duly authorized in writing and verified by affidavit; or

(b) where made by a lien claimant that is a corporation sealed with its corporate seal.

(2) Upon application, the judge or, in the Judicial District of York, the master, may, at any time, Security or payment into court and vacating lien and certificate of action

(a) allow security for or payment into court of the amount of the claim of the lien claimant and the amount of the claims of any other subsisting lien claimants together with such costs as he may fix, and thereupon order that the registration of the claim for lien or liens and the registration of the certificate of action, if any, be vacated;

(b) upon any other proper ground, order that the registration of the claim for lien or liens and the registration of the certificate of action, if any, be vacated; or

(c) upon proper grounds, dismiss the action.

(3) Notwithstanding sections 24 and 26, where an order to vacate the registration of a lien is made under clause (2) (a) or (b), the lien does not cease to exist for the reason that no certificate of action is registered. Effect of order under subs. (2) (a) or (b)

(4) Any money so paid into court, or any bond or other security for securing the like amount and satisfactory to the judge or officer, takes the place of the property discharged and is subject to the claims of every person who has at the time of the application a subsisting claim for lien or given notice of the claim under subsection 12 (7) or section 15 to the same extent as if the money, bond or other security was realized by a sale of the property in an action to enforce the lien, but such amount as the judge or officer finds to be owing to the person whose lien has been so vacated is a first charge upon the money, bond or other security. Money paid into court

Where
notice of
application
to vacate not
requisite

R.S.O. 1980,
cc. 230, 445

(5) Where the certificate required by section 24 or 26 has not been registered within the prescribed time and an application is made to vacate the registration of a claim for lien after the time for registration of the certificate, the order vacating the lien may be made *ex parte* upon production of a certificate of search under the *Land Titles Act* or of a registrar's abstract under the *Registry Act*, as the case may be, together with a certified copy of the registered claim for lien.

Payment of
money out
of court

(6) Where money has been paid into court or a bond deposited in court pursuant to an order under subsection (2), the judge or, in the Judicial District of York, the master, may, upon such notice to the parties as he may require, order the money to be paid out to the persons entitled thereto or the delivery up of the bond for cancellation, as the case may be.

Registration
number

(7) An order discharging a claim for lien or vacating a certificate of action shall be registered by registering the order or a certificate thereof, under the seal of the court, that includes a description of the land as required by the *Land Titles Act* or the *Registry Act* and the regulations thereunder, as the case may be, and a reference to the registration number of every registered claim for lien and certificate of action affected thereby. R.S.O. 1970, c. 267, s. 25.

EFFECT OF TAKING SECURITY OR EXTENDING TIME

Effect
generally

30.—(1) The taking of any security for, or the acceptance of any promissory note or bill of exchange for, or the taking of any acknowledgment of the claim, or the giving of time for the payment thereof, or the taking of any proceedings for the recovery, or the recovery of a personal judgment for the claim, does not merge, waive, pay, satisfy, prejudice or destroy the lien unless the lien claimant agrees in writing that it has that effect.

Where
period of
credit not
expired

(2) Where any such promissory note or bill of exchange has been negotiated, the lien claimant does not thereby lose his right to claim for lien if, at the time of bringing his action to enforce it or where an action is brought by another lien claimant, he is, at the time of proving his claim in the action, the holder of such promissory note or bill of exchange.

(3) Nothing in subsection (2) extends the time limited by this Act for bringing an action to enforce a claim for lien. Time for bringing action not extended

(4) A person who has extended the time for payment of a claim for which he has a claim for lien in order to obtain the benefit of this section shall commence an action to enforce the claim within the time prescribed by this Act and shall register a certificate as required by sections 24 and 26, but no further proceedings shall be taken in the action until the expiration of such extension of time. R.S.O. 1970, c. 267, s. 26. Time for bringing action by person who gave time for payment

31. Where the period of credit in respect of a claim has not expired or there has been an extension of time for payment of the claim, the lien claimant may nevertheless, if an action is commenced by any other person to enforce a claim for lien against the same property, prove and obtain payment of his claim in the action as if the period of credit or the extended time had expired. R.S.O. 1970, c. 267, s. 27. Proving claim in action by another person

LIEN CLAIMANT'S RIGHTS TO INFORMATION

32.—(1) Any lien claimant may in writing at any time demand of the owner or his agent the production, for inspection, of the contract or agreement with the contractor for or in respect of which the work was or is to be done or the materials were or are to be placed or furnished, if the contract or agreement is in writing or, if not in writing, the terms of the contract or agreement and the state of the accounts between the owner and the contractor, and, if the owner or his agent does not, at the time of the demand or within a reasonable time thereafter, produce the contract or agreement if in writing or, if not in writing, does not inform the person making the demand of the terms of the contract or agreement and the amount due and unpaid upon the contract or agreement or if he knowingly falsely states the terms of the contract or agreement or the amount due or unpaid thereon and if the person claiming the lien sustains loss by reason of the refusal or neglect or false statement, the owner is liable to him for the amount of the loss in an action therefor or in any action for the enforcement of a lien under this Act, and subsection 42 (4) applies. Production of contract or agreement

Statement of
mortgagee or
unpaid
vendor

(2) Any lien claimant may in writing at any time demand of a mortgagee or unpaid vendor or his agent the terms of any mortgage on the land or of any agreement for the purchase of the land in respect of which the work was or is to be done or the materials were or are to be placed or furnished and a statement showing the amount advanced on the mortgage or the amount owing on the agreement, as the case may be, and, if the mortgagee or vendor or his agent fails to inform the lien claimant at the time of the demand or within a reasonable time thereafter of the terms of the mortgage or agreement and the amount advanced or owing thereon or if he knowingly falsely states the terms of the mortgage or agreement and the amount owing thereon and the lien claimant sustains loss by the refusal or neglect or misstatement, the mortgagee or vendor is liable to him for the amount of the loss in an action therefor or in any action for the enforcement of a lien under this Act, and subsection 42 (4) applies.

Production
of contract
or agreement

(3) The judge or, in the Judicial District of York, the master, may, on a summary application at any time before or after an action is commenced for the enforcement of the claim for lien, make an order requiring the owner or his agent or the mortgagee or his agent or the unpaid vendor or his agent or the contractor or his agent or the subcontractor or his agent, as the case may be, to produce and permit any lien claimant to inspect any such contract or agreement or mortgage or agreement for sale or the accounts or any other relevant document upon such terms as to costs as the judge or master considers just. R.S.O. 1970, c. 267, s. 28.

ACTIONS

How claim
enforceable

33.—(1) A claim for lien is enforceable in an action in the Supreme Court.

Statement
of claim,
filing of

(2) An action under this section shall be commenced by filing a statement of claim in the office of the local registrar of the Supreme Court in the county or district in which the land or part thereof is situate.

Idem,
service

(3) The statement of claim shall be served within thirty days after it is filed, but the judge having jurisdiction to try the action or, in the Judicial District of York, the master, may extend the time for service.

Statement
of defence

(4) The time for delivering the statement of defence in the action shall be the same as for entering an appearance in an action in the Supreme Court.

(5) It is not necessary to make any lien claimants ^{Parties} parties defendant to the action, but all lien claimants served with the notice of trial shall for all purposes be deemed to be parties to the action.

(6) After the commencement of the action, any lien claimant or other person interested may apply to the judge having jurisdiction to try the action or, in the Judicial District of York, a judge of the Supreme Court, to speed the trial of the action. R.S.O. 1970, c. 267, s. 29. ^{Motion to speed trial}

34. Any number of lien claimants claiming liens on the same land may join in an action, and an action brought by a lien claimant shall be deemed to be brought on behalf of himself and all other lien claimants. R.S.O. 1970, c. 267, s. 30. ^{Lien claimants joining in action}

35.—(1) Except in the Judicial District of York, the action shall be tried by the local judge of the Supreme Court in the county or district in which the action was commenced, but, upon the application of any party or other interested person made according to the practice of the Supreme Court and upon notice, the court may direct that the action be tried by a judge of the Supreme Court at the regular sittings of the court for the trial of actions in the county or district in which the action was commenced. ^{Tribunal and place of trial}

(2) In the Judicial District of York, the action shall be tried by a judge of the Supreme Court, but, ^{Idem, York}

(a) on motion after defence or defence to counter-claim, if any, has been delivered or the time for such delivery has expired, a judge of the Supreme Court may refer the whole action to the master for trial pursuant to section 71 of the *Judicature Act*; or

R.S.O. 1980,
c. 223

(b) at the trial, a judge of the Supreme Court may direct a reference to the master pursuant to section 70 or 71 of the *Judicature Act*.

(3) Where on motion the whole action is referred to the master for trial, any person brought into the proceedings subsequent thereto and served with a notice of trial may apply to a judge of the Supreme Court to set aside the judgment directing the reference within seven days after service of notice of trial and, if such person fails to make such application, he is bound by such judgment as if he were originally a party thereto. ^{Application to set aside judgment directing a reference}

Amendment
of pleadings
on reference

(4) Where the action is referred to the master for trial, he may grant leave to amend any pleading. R.S.O. 1970, c. 267, s. 31.

Powers of
local judges
S.C.O., etc.

36. The local judges of the Supreme Court and the master to whom a reference for trial has been directed, in addition to their ordinary powers, have all the jurisdiction, powers and authority of the Supreme Court to try and completely dispose of the action and questions arising therein and all questions of set-off and counterclaim arising under the building contract or out of the work done or materials furnished to the property in question. R.S.O. 1970, c. 267, s. 32.

Where
contract
covers
several
buildings

37. Where an owner enters into an entire contract for the supply of materials to be used in several buildings, the person supplying the materials may ask to have his lien follow the form of the contract and that it be for an entire sum upon all the buildings, but, in case the owner has sold one or more of the buildings, the judge or officer trying the action has jurisdiction equitably to apportion against the respective buildings the amount included in the claim for lien under the entire contract. R.S.O. 1970, c. 267, s. 33.

Power to
appoint a
receiver of
rents and
profits

38.—(1) At any time after the delivery of the statement of claim, the judge having jurisdiction to try the action or, in the Judicial District of York, a judge of the Supreme Court, may, on the application of any lien claimant, mortgagee or other person interested, appoint a receiver of the rents and profits of the property against which the claim for lien is registered upon such terms and upon the giving of such security or without security as the judge considers just.

Power to
direct
sale and
appoint
trustee

(2) Any lien claimant, mortgagee or other person interested may make an application to the judge having jurisdiction to try the action or, in the Judicial District of York, a judge of the Supreme Court, at any time before or after judgment, who may hear *viva voce* or affidavit evidence or both and appoint, upon such terms and upon the giving of such security or without security as the judge considers just, a trustee or trustees with power to manage, mortgage, lease and sell, or manage, mortgage, lease or sell, the property against which the claim for lien is registered, and the exercise of such powers shall be under the supervision and direction of the court, and with power, when so directed by the court, to complete or partially complete the property, and, in the event that mortgage moneys are advanced to

the trustee or trustees as the result of any of the powers conferred upon him or them under this subsection, such moneys take priority over every claim of lien existing as of the date of the appointment.

(3) Any property directed to be sold under subsection (2) may be offered for sale subject to any mortgage or other charge or encumbrance if the judge so directs. Property offered for sale

(4) The proceeds of any sale made by a trustee or trustees under subsection (2) shall be paid into court and are subject to the claims of all lien claimants, mortgagees or other persons interested in the property so sold as their respective rights are determined, and, in so far as applicable, section 43 applies. Proceeds to be paid into court

(5) The judge shall make all necessary orders for the completion of any mortgage, lease or sale authorized to be made under subsection (2). Orders for completion of sale

(6) Any vesting order made of property sold by a trustee or trustees appointed under subsection (2) vests the title of the property free from all claims for liens, encumbrances and interests of any kind, except in cases where sale is made subject to any mortgage, charge, encumbrance or interest as hereinbefore provided. R.S.O. 1970, c. 267, s. 34, *revised*. Vesting of title

39. At any time after delivery of the statement of claim and before judgment, or after judgment and pending the hearing and determination of any appeal, any lien claimant, mortgagee or other interested person may make an application to the judge having jurisdiction to try the action or who tried the action, as the case may be, or, in the Judicial District of York, a judge of the Supreme Court, who may hear *viva voce* or affidavit evidence or both and make an order for the preservation of any property pending the determination of the action and any appeal. R.S.O. 1970, c. 267, s. 35. Order for preservation of property

40. Where more actions than one are brought to realize liens in respect of the same land, the judge or officer having jurisdiction to try the action may, on the application of any party to any one of the actions or on the application of any other person interested, consolidate all such actions into one action and award the conduct of the consolidated action to any plaintiff as the judge or officer considers just. R.S.O. 1970, c. 267, s. 36. Consolidation of actions

Transferring
carriage of
proceedings

41. Any lien claimant entitled to the benefit of an action may at any time apply to the judge or officer having jurisdiction to try the action for the carriage of the proceedings, and the judge or officer may make an order awarding such lien claimant the carriage of the proceedings. R.S.O. 1970, c. 267, s. 37.

Appointing
day for trial

42.—(1) After the delivery of the statement of defence where the plaintiff's claim is disputed, or after the time for delivery of defence in all other cases, either party may apply *ex parte* to a judge or officer having jurisdiction to try the action to fix a day for the trial thereof, and the judge or officer shall appoint the time and place of trial, and the order, signed by the judge or officer, shall form part of the record of the proceedings.

Notice of
trial and
service

(2) The party obtaining an appointment for the trial shall, at least ten clear days before the day appointed, serve notice of trial upon the solicitors for the defendants who appear by solicitors and upon the defendants who appear in person, and upon all the lienholders who have registered their claims as required by this Act or of whose claims he has notice, and upon all other persons having any charge, encumbrance or claim on the land subsequent in priority to the lien, who are not parties, and such service shall be personal unless otherwise directed by the judge or officer who may direct in what manner the notice of trial is to be served.

Idem

(3) Where any person interested in the land has been served with a statement of claim and makes default in delivering a statement of defence, he shall nevertheless be served with notice of trial and is entitled to defend on such terms as to costs and otherwise as the judge or officer having jurisdiction to try the action considers just.

Trial

(4) The judge, or where a reference for trial is directed, the master,

(a) shall try the action, including any set-off and counterclaim, and all questions that arise therein or that are necessary to be tried in order to completely dispose of the action and to adjust the rights and liabilities of the persons appearing before him or upon whom notice of trial has been served;

(b) shall take all accounts, make all inquiries, give all directions and do all other things necessary to finally dispose of the action and of all matters, questions and accounts arising therein or at the trial, and to adjust the rights and liabilities of and give all necessary relief to all parties to the action and all persons who have been served with the notice of trial; and

(c) shall embody the results of the trial,

(i) in the case of a judge, in a judgment, and

(ii) in the case of a master, in a report,

which judgment or report may direct payment forthwith by the person or persons primarily liable to pay the amount of the claims and costs as ascertained by the judgment or report, and execution may be issued therefor forthwith in the case of a judgment and after confirmation thereof, in the case of a report.

(5) The form of the judgment or report may be varied by the judge or officer in order to meet the circumstances of the case so as to afford to any party to the proceedings any right or remedy in the judgment or report to which he may be entitled. Power to vary form of judgment

(6) The judge or officer may order that the estate or interest charged with the lien be sold, and may direct the sale to take place at any time after judgment or confirmation of the report, allowing, however, a reasonable time for advertising the sale. Sale

(7) A lien claimant who did not prove his claim at the trial, on application to the judge or officer before whom the action or reference was tried, may be let in to prove his claim, on such terms as to costs and otherwise as are deemed just, at any time before the amount realized in the action for the satisfaction of liens has been distributed, and, where his claim is allowed, the judgment or report shall be amended so as to include his claim. Letting in lien claimants

(8) Any lien claimant for an amount not exceeding \$200 may be represented by an agent who is not a barrister and solicitor. Right of lien claimants to representation

Action may
be tried by
any judge

(9) An action or reference under this Act may be tried by any judge or officer having jurisdiction to try the action or reference notwithstanding that the time and place for the trial or reference thereof were appointed and fixed by another judge or officer.

Applications
for
directions

(10) Any party to an action under this Act or any other interested person may at any time and from time to time apply to the judge having jurisdiction to try the action or, in the Judicial District of York, the master, for directions as to pleadings, discovery, production or any other matter relating to the action or reference, including the cross-examination of a lien claimant or his agent or assignee on his affidavit verifying the claim. R.S.O. 1970, c. 267, s. 38.

Report
where sale
is had

43.—(1) Where a sale is had, the moneys arising therefrom shall be paid into court to the credit of the action, and the judge or officer before whom the action was tried shall direct to whom the moneys in court shall be paid and may add to the claim of the person conducting the action his fees and actual disbursements incurred in connection with the sale, and, where sufficient to satisfy the judgment and costs is not realized from the sale, he shall certify the amount of the deficiency and the names of the persons who are entitled to recover the same, showing the amount that each is entitled to recover and the persons adjudged to pay the same, giving credit for payments made, if any, under subsection 42 (4), and the persons so entitled may enforce payment of the amounts so found to be due by execution or otherwise.

Completion
of sale

(2) The judge or officer before whom the action was tried may make all necessary orders for the completion of the sale and for vesting the property in the purchaser. R.S.O. 1970, c. 267, s. 39.

Where
lien not
established

44. Where a lien claimant fails to establish a lien, he may nevertheless recover a personal judgment against any party to the action for such sum as may appear to be due to him and which he might recover in an action against such party. R.S.O. 1970, c. 267, s. 40.

Right of
lienholders
whose claims
are not
payable to
share in
proceeds

45. Where property subject to a lien is sold in an action to enforce a lien, every lienholder is entitled to share in the proceeds of the sale in respect of the amount then owing to him, although the same or part thereof was not payable at the time of the commencement of the action or is not then presently payable. R.S.O. 1970, c. 267, s. 41.

STATED CASE

46.—(1) If in the course of proceedings to enforce a lien a Stated case question of law arises, the judge or officer trying the case may, at the request of any party, state the question in the form of a stated case for the opinion of the Divisional Court, and the stated case shall thereupon be set down to be heard before the Divisional Court and notice of hearing shall be served by the party setting down upon all parties concerned.

(2) The stated case shall set forth the facts material for the Transmission of papers determination of the question raised, and all papers necessary for the hearing of the stated case by the Divisional Court shall be transmitted to the registrar of the Supreme Court. R.S.O. 1970, c. 267, s. 42.

APPEAL

47.—(1) Except where the amount of a judgment or report Appeal made on a reference for trial in respect of a claim or counterclaim is \$200 or less, an appeal lies from any judgment or report under this Act to the Divisional Court.

(2) Where a question is referred to the master for inquiry and Appeal from reference report under subsection 35 (2), an appeal lies in the manner prescribed by the rules of court.

(3) Where an action is referred to the master for trial under subsection 35 (2), the report shall be filed and shall be deemed to be confirmed at the expiration of fifteen days from the date of service of notice of filing the same, unless notice of appeal is served within that time. Confirmation of master's report

(4) The costs of an appeal shall not be governed by subsections Costs of appeal 49 (2) and (3) but, subject to any order of the Divisional Court, shall be upon the scale of costs allowed in county court appeals where the amount involved is within the proper competence of the county court, and, where it exceeds that amount, upon the Supreme Court scale. R.S.O. 1970, c. 267, s. 43, *revised*.

FEEES AND COSTS

48. The fee payable by every plaintiff, every plaintiff by Fee counterclaim and every lien claimant, including every person

recovering a personal judgment, in any action to realize a lien under this Act is,

- (a) \$5 on a claim or counterclaim not exceeding \$500;
- (b) \$10 on a claim or counterclaim exceeding \$500 but not exceeding \$1,000;
- (c) \$10 on a claim or counterclaim exceeding \$1,000, plus \$1 for every \$1,000 or fraction thereof in excess of \$1,000,

but no fee is payable on a claim for wages only, and in no case shall the fee on a claim exceed \$75 or on a counterclaim exceed \$25. R.S.O. 1970, c. 267, s. 44.

Costs not
otherwise
provided
for

49.—(1) Subject to subsections (2), (3), (4) and (5), any order as to costs in an action under this Act is in the discretion of the judge or officer who tries the action.

Limit of
costs to
plaintiffs

(2) The costs of the action, exclusive of actual disbursements, awarded to the plaintiffs and successful lienholders, shall not exceed in the aggregate 25 per cent of the total amount found to have been actually due on the liens at the time of the registration thereof, and shall be apportioned and borne in such proportion as the judge or officer who tries the action may direct, but in making the apportionment he shall have regard to the actual services rendered by or on behalf of the parties respectively, provided that, where a counterclaim is set up by a defendant, the amount and apportionment of the costs in respect thereof are in the discretion of the judge or officer who tries the action.

Limit of
costs against
plaintiffs

(3) Where costs are awarded against the plaintiff or other persons claiming liens, they shall not exceed, except in the case of a counterclaim, 25 per cent of the claim of the plaintiff and the other claimants, besides actual disbursements, and shall be apportioned and borne as the judge or officer who tries the action may direct.

Costs
where least
expensive
course not
taken

(4) Where the least expensive course is not taken by a plaintiff, the costs allowed to him shall in no case exceed what would have been incurred if the least expensive course had been taken.

Costs of
drawing and
registering
and vacating
registration
of lien

(5) Where a lien is discharged or vacated under section 29 or where judgment is given in favour of or against a claim for a lien, in addition to the costs of the action, the judge or officer who tries the action may allow a reasonable amount for the costs of drawing and registering the claim for lien or of

vacating the registration thereof, but this does not apply where the claimant fails to establish a valid lien. R.S.O. 1970, c. 267, s. 45.

RULES OF PRACTICE

50.—(1) The object of this Act being to enforce liens at the least expense, the procedure shall be as far as possible of a summary character, having regard to the amount and nature of the liens in question. Rules of practice

(2) Except where otherwise provided by this Act, no interlocutory proceedings shall be permitted without the consent of the judge having jurisdiction to try the action or, in the Judicial District of York, the master, and then only upon proper proof that such proceedings are necessary. Interlocutory proceedings

(3) The judge or officer having jurisdiction to try the action may obtain the assistance of any merchant, accountant, actuary, building contractor, architect, engineer or person in such way as he deems fit, the better to enable him to determine any matter of fact in question, and may fix the remuneration of any such person and direct payment thereof by any of the parties. Assistance of experts

(4) Unless otherwise provided in this Act, the Rules of Practice and Procedure of the Supreme Court apply to proceedings under this Act. R.S.O. 1970, c. 267, s. 46. Rules of practice

SERVICE OF DOCUMENTS

51. Except where otherwise directed by the judge having jurisdiction to try the action or, in the Judicial District of York, the master, all documents relating to an action under this Act, other than statements of claim and notices of trial, are sufficiently served upon the intended recipient if sent by registered mail addressed to the intended recipient at his address for service. R.S.O. 1970, c. 267, s. 47. Service of documents

LIENS ON CHATTELS

52.—(1) Every person who has bestowed money, skill or materials upon any chattel or thing in the alteration or improvement of its properties or for the purpose of imparting an additional value to it, so as thereby to be entitled to a lien upon the chattel or thing for the amount or value of the money or skill and material bestowed, has, while the lien exists but not afterwards, in case the amount to which he is entitled remains unpaid for three months after it ought to have been paid, the right, in addition to any other remedy to which Right of chattel lienholder to sell chattel

he may be entitled, to sell by auction the chattel or thing on giving one week's notice by advertisement in a newspaper having general circulation in the municipality in which the work was done, setting forth the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale, and the name of the auctioneer, and leaving a like notice in writing at the last known place of residence, if any, of the owner, if he is a resident of the municipality.

Application
of proceeds
of sale

(2) Such person shall apply the proceeds of the sale in payment of the amount due to him and the costs of advertising and sale and shall upon application pay over any surplus to the person entitled thereto. R.S.O. 1970, c. 267, s. 48.

REGULATIONS

Regulations

53. The Lieutenant Governor in Council may make regulations,

- (a) prescribing forms and providing for their use;
- (b) providing for and requiring the posting of notices on building sites;
- (c) prescribing the appropriate offices of the Crown to which notice of a claim for lien must be sent. 1975, c. 43, s. 14.

CHAPTER 262

Mental Health Act

1. In this Act,

Interpre-
tation

- (a) “attending physician” means the physician to whom responsibility for the observation, care and treatment of a patient has been assigned;
- (b) “Deputy Minister” means the Deputy Minister of Health;
- (c) “involuntary patient” means a person who is detained in a psychiatric facility under a certificate of involuntary admission or a certificate of renewal;
- (d) “local board of health” has the same meaning as local board in the *Public Health Act*;
- (e) “medical officer of health” has the same meaning as in the *Public Health Act*;
- (f) “mental disorder” means any disease or disability of the mind;
- (g) “mentally competent” means having the ability to understand the subject-matter in respect of which consent is requested and able to appreciate the consequences of giving or withholding consent;
- (h) “Minister” means the Minister of Health;
- (i) “Ministry” means the Ministry of Health;
- (j) “nearest relative” means,
 - (i) the spouse who is of any age and mentally competent, or
 - (ii) if none or if the spouse is not available, any one of the children who has attained the age of majority and is mentally competent, or
 - (iii) if none or if none is available, either of the parents who is mentally competent or the guardian, or

R.S.O. 1980,
c. 409

- (iv) if none or if neither is available, any one of the brothers or sisters who has attained the age of majority and is mentally competent, or
- (v) if none or if none is available, any other of the next of kin who has attained the age of majority and is mentally competent;
- (*k*) "officer in charge" means the officer who is responsible for the administration and management of a psychiatric facility;
- (*l*) "out-patient" means a person who is registered in a psychiatric facility for observation or treatment or both, but who is not admitted as a patient and is not the subject of an application for assessment;
- (*m*) "patient" means a person who is under observation, care and treatment in a psychiatric facility;
- (*n*) "physician" means a legally qualified medical practitioner;
- (*o*) "prescribed" means prescribed by the regulations;
- (*p*) "psychiatric facility" means a facility for the observation, care and treatment of persons suffering from mental disorder, and designated as such by the regulations;
- (*q*) "psychiatrist" means a physician who holds a specialist's certificate in psychiatry issued by The Royal College of Physicians and Surgeons of Canada or equivalent qualification acceptable to the Minister;
- (*r*) "regional review board" means the review board appointed under section 30 having jurisdiction in respect of the psychiatric facility in which the person in respect of whom a hearing is required is a patient;
- (*s*) "regulations" means the regulations made under this Act;
- (*t*) "restrain" means keep under control by the minimal use of such force, mechanical means or chemicals as is reasonable having regard to the physical and mental condition of the patient;

- (u) "senior physician" means the physician responsible for the clinical services in a psychiatric facility. R.S.O. 1970, c. 269, s. 1; 1972, c. 1, s. 1; 1978, c. 50, s. 1.

2. Nothing in this Act shall be deemed to affect the rights or privileges of any person except as specifically set out in this Act. 1978, c. 50, s. 2. Effect of Act on rights and privileges

PART I

STANDARDS

3. This Act applies to every psychiatric facility. R.S.O. 1970, c. 269, s. 2. Application of Act

4. Every psychiatric facility has power to carry on its undertaking as authorized by any Act, but, where the provisions of any Act conflict with the provisions of this Act or the regulations, the provisions of this Act and the regulations prevail. R.S.O. 1970, c. 269, s. 3. Conflict

5.—(1) The Minister may designate officers of the Ministry or appoint persons who shall advise and assist medical officers of health, local boards of health, hospitals and other bodies and persons in all matters pertaining to mental health and who shall have such other duties as are assigned to them by this Act or the regulations. R.S.O. 1970, c. 269, s. 4 (1); 1972, c. 1, s. 1. Advisory officers

(2) Any such officer or person may at any time, and shall be permitted so to do by the authorities thereat, visit and inspect any psychiatric facility, and in so doing may interview patients, examine books, records and other documents relating to patients, examine the condition of the psychiatric facility and its equipment, and inquire into the adequacy of its staff, the range of services provided and any other matter he considers relevant to the maintenance of standards of patient care. R.S.O. 1970, c. 269, s. 4 (2). Powers

6. The Minister may pay psychiatric facilities provincial aid in such manner, in such amounts and under such conditions as are prescribed by the regulations. R.S.O. 1970, c. 269, s. 5. Provincial aid

PART II

HOSPITALIZATION

7. Notwithstanding this or any other Act, admission to a psychiatric facility may be refused where the immediate needs in the case of the proposed patient are such that hospitalization is not urgent or necessary. R.S.O. 1970, c. 269, s. 6. Where admission may be refused

Admission
of informal
patients

8. Any person who is believed to be in need of the observation, care and treatment provided in a psychiatric facility may be admitted thereto as an informal patient upon the recommendation of a physician. R.S.O. 1970, c. 269, s. 7.

Application
for
psychiatric
assessment

9.—(1) Where a physician examines a person and has reasonable cause to believe that the person,

- (a) has threatened or attempted or is threatening or attempting to cause bodily harm to himself;
- (b) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or
- (c) has shown or is showing a lack of competence to care for himself,

and if in addition the physician is of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

- (d) serious bodily harm to the person;
- (e) serious bodily harm to another person; or
- (f) imminent and serious physical impairment of the person,

the physician may make application in the prescribed form for a psychiatric assessment of the person.

Contents of
application

(2) An application under subsection (1) shall set out clearly that the physician who signs the application personally examined the person who is the subject of the application and made careful inquiry into all of the facts necessary for him to form his opinion as to the nature and quality of the mental disorder of the person.

Idem

(3) A physician who signs an application under subsection (1),

- (a) shall set out in the application the facts upon which he formed his opinion as to the nature and quality of the mental disorder;
- (b) shall distinguish in the application between the facts observed by him and the facts communicated to him by others; and
- (c) shall note in the application the date on which he examined the person who is the subject of the application.

(4) An application under subsection (1) is not effective unless it is signed by the physician within seven days after he examined the person who is the subject of the examination. Signing of application

(5) An application under subsection (1) is sufficient authority for seven days from and including the day on which it is signed by the physician, Authority of application

(a) to any person to take the person who is the subject of the application in custody to a psychiatric facility forthwith; and

(b) to detain the person who is the subject of the application in a psychiatric facility and to restrain, observe and examine him in the facility for not more than 120 hours. 1978, c. 50, s. 3.

10.—(1) Where information upon oath is brought before a justice of the peace that a person within the limits of the jurisdiction of the justice, Justice of the peace's order for psychiatric assessment

(a) has threatened or attempted or is threatening or attempting to cause bodily harm to himself;

(b) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or

(c) has shown or is showing a lack of competence to care for himself,

and in addition based upon the information before him the justice of the peace has reasonable cause to believe that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

(d) serious bodily harm to the person;

(e) serious bodily harm to another person; or

(f) imminent and serious physical impairment of the person,

the justice of the peace may issue his order in the prescribed form for the assessment of the person by a physician. 1978, c. 50, s. 4 (1).

(2) An order under this section may be directed to all or Idem any constables or other peace officers of the locality within

which the justice has jurisdiction and shall name or otherwise describe the person with respect to whom the order has been made. R.S.O. 1970, c. 269, s. 9 (3).

Authority
of order

(3) An order under this section shall direct, and, for a period not to exceed seven days from and including the day that it is made, is sufficient authority for any constable or other peace officer to whom it is addressed to take the person named or described therein in custody forthwith to an appropriate place where he may be detained for assessment by a physician. 1978, c. 50, s. 4 (3).

Action
by peace
officer

11. Where a constable or other peace officer observes a person who acts in a manner that in a normal person would be disorderly and has reasonable cause to believe that the person,

- (a) has threatened or attempted or is threatening or attempting to cause bodily harm to himself;
- (b) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him; or
- (c) has shown or is showing a lack of competence to care for himself,

and in addition the constable or other peace officer is of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,

- (d) serious bodily harm to the person;
- (e) serious bodily harm to another person; or
- (f) imminent and serious physical impairment of the person,

and that it would be dangerous to proceed under section 10, the constable or other peace officer may take the person in custody to an appropriate place for assessment by a physician. 1978, c. 50, s. 5, *part*.

Place of
psychiatric
assessment

12. An assessment under section 10 or 11 shall be conducted by a physician forthwith after receipt of the person at the place of assessment and where practicable the place shall be a psychiatric facility or other health facility. 1978, c. 50, s. 5, *part*.

Change from
informal
patient to
involuntary
patient

13. Subject to subsection 14 (5), the attending physician may change the status of an informal patient to that of an involuntary

patient by completing and filing with the officer in charge a certificate of involuntary admission. 1978, c. 50, s. 5, *part*.

14.—(1) The attending physician, after observing and examining a person who is the subject of an application for assessment under section 9 or who is the subject of an order under section 26,

Duty of attending physician

- (a) shall release the person from the psychiatric facility if the attending physician is of the opinion that the person is not in need of the treatment provided in a psychiatric facility;
- (b) shall admit the person as an informal patient if the attending physician is of the opinion that the person is suffering from mental disorder of such a nature or quality that the person is in need of the treatment provided in a psychiatric facility and is suitable for admission as an informal patient; or
- (c) shall admit the person as an involuntary patient by completing and filing with the officer in charge a certificate of involuntary admission if the attending physician is of the opinion both that the person is suffering from mental disorder of a nature or quality that likely will result in,
 - (i) serious bodily harm to the person,
 - (ii) serious bodily harm to another person, or
 - (iii) imminent and serious physical impairment of the person,

unless the person remains in the custody of a psychiatric facility and that the person is not suitable for admission as an informal patient.

(2) The physician who completes a certificate of involuntary admission pursuant to clause (1) (c) shall not be the same physician who completed the application for psychiatric assessment pursuant to section 9.

Physician who completes certificate of involuntary admission

(3) The officer in charge shall release a person who is the subject of an application for assessment under section 9 or who is the subject of an order under section 26 upon the completion of 120 hours of detention in the psychiatric facility unless the attending physician has released the person, has admitted the person as an informal patient or has admitted the person as an involuntary patient by completing and

Release of person by officer in charge

filing with the officer in charge a certificate of involuntary admission.

Authority of
certificate

(4) An involuntary patient may be detained, restrained, observed and examined in a psychiatric facility,

(a) for not more than two weeks under a certificate of involuntary admission; and

(b) for not more than,

(i) one additional month under a first certificate of renewal,

(ii) two additional months under a second certificate of renewal, and

(iii) three additional months under a third or subsequent certificate of renewal,

that is completed and filed with the officer in charge by the attending physician.

Conditions
precedent
to making
of certificate
of involuntary
admission or
certificate of
renewal

(5) The attending physician shall not complete a certificate of involuntary admission or a certificate of renewal unless, after he has examined the patient, he is of the opinion both,

(a) that the patient is suffering from mental disorder of a nature or quality that likely will result in,

(i) serious bodily harm to the patient,

(ii) serious bodily harm to another person, or

(iii) imminent and serious physical impairment of the patient,

unless the patient remains in the custody of a psychiatric facility; and

(b) that the patient is not suitable for admission or continuation as an informal patient. 1978, c. 50, s. 6 (1).

Change of
status, where
period of
detention
has expired

(6) An involuntary patient whose authorized period of detention has expired shall be deemed to be an informal patient.

Idem, where
period of
detention
has not
expired

(7) An involuntary patient whose authorized period of detention has not expired may be continued as an informal

patient upon completion of the prescribed form by the attending physician. R.S.O. 1970, c. 269, s. 13 (4, 5).

(8) Forthwith following completion and filing of a certificate of involuntary admission or of a certificate of renewal, the officer in charge or his delegate shall review the certification documents to ascertain whether or not they have been completed in compliance with the criteria outlined in this Act and where, in his opinion, the documents are not properly completed, the officer in charge shall so inform the attending physician and, unless the person is re-examined and released or admitted in accordance with subsections (1) and (2), the officer in charge shall release the person. 1978, c. 50, s. 6 (2).

Examination
of
certificate
by officer
in charge

15.—(1) Where a judge has reason to believe that a person who appears before him charged with or convicted of an offence suffers from mental disorder, the judge may order the person to attend a psychiatric facility for examination.

Judge's
order for
examination

(2) Where an examination is made under this section, the senior physician shall report in writing to the judge as to the mental condition of the person.

Senior
physician's
report

(3) If the senior physician reports that the person examined needs treatment, the judge may order the person to attend a psychiatric facility for treatment. R.S.O. 1970, c. 269, s. 14.

Judge's
order for
treatment

16.—(1) Where a judge has reason to believe that a person in custody who appears before him charged with an offence suffers from mental disorder, the judge may, by order, remand that person for admission as a patient to a psychiatric facility for a period of not more than two months.

Judge's
order for
admission

(2) Before the expiration of the time mentioned in such order, the senior physician shall report in writing to the judge as to the mental condition of the person. R.S.O. 1970, c. 269, s. 15.

Senior
physician's
report

17. A judge shall not make an order under section 15 or 16 until he ascertains from the senior physician of a psychiatric facility that the services of the psychiatric facility are available to the person to be named in the order. R.S.O. 1970, c. 269, s. 16.

Condition
precedent
to judge's
order

18. Notwithstanding this or any other Act or any regulation made under any other Act, the senior physician may report all or any part of the information compiled by the psychiatric facility to any person where, in the opinion of

Contents
of senior
physician's
report

the senior physician, it is in the best interests of the person who is the subject of an order made under section 15 or 16. R.S.O. 1970, c. 269, s. 17.

Persons
detained
under
R.S.C. 1970,
c. C-34

19. Any person who, pursuant to the *Criminal Code* (Canada), is,

- (a) remanded to custody for observation; or
- (b) detained under the authority of a warrant of the Lieutenant Governor,

may be admitted to, detained in, and discharged from a psychiatric facility in accordance with the law. R.S.O. 1970, c. 269, s. 18.

Communi-
cations to
and from
patients

20.—(1) Except as provided in this section, no communication written by a patient or sent to a patient shall be opened, examined or withheld, and its delivery shall not in any way be obstructed or delayed.

Where
communica-
tion may be
withheld

(2) Where the officer in charge or a person acting under his authority has reasonable and probable cause to believe,

- (a) that the contents of a communication written by a patient would,
 - (i) be unreasonably offensive to the addressee, or
 - (ii) prejudice the best interests of the patient; or
- (b) that the contents of a communication sent to a patient would,
 - (i) interfere with the treatment of the patient, or
 - (ii) cause the patient unnecessary distress,

the officer in charge or a person acting under his authority may open and examine the contents thereof and, if any condition mentioned in clause (a) or (b), as the case may be, exists, may withhold such communication from delivery.

Exceptions

(3) Subsection (2) does not apply to a communication written by a patient to, or appearing to be sent to a patient by,

- (a) a barrister and solicitor;
- (b) a member of a review board or advisory review board under this Act; or

- (c) a member of the Assembly. R.S.O. 1970, c. 269, s. 19.

21.—(1) The officer in charge may, upon the advice of the attending physician, place a patient on leave of absence from the psychiatric facility for a designated period of not more than three months, if the intention is that the patient shall return thereto.

Leave of absence

(2) Leave of absence may be permitted upon such terms and conditions as the officer in charge may prescribe.

Terms and conditions

(3) Subsection (1) does not authorize the placing of a patient on leave of absence where he is subject to detention otherwise than under this Act. R.S.O. 1970, c. 269, s. 20.

Exception

22.—(1) Where a person who is subject to detention is absent without leave from a psychiatric facility, a constable or other peace officer or any one appointed by the officer in charge may return the person to the psychiatric facility or take the person to the psychiatric facility nearest to the place where the person is apprehended,

Unauthorized absence

(a) within twenty-four hours after his absence becomes known to the officer in charge; or

(b) under the authority of an order in the prescribed form issued by the officer in charge, within one month after his absence becomes known to the officer in charge. R.S.O. 1970, c. 269, s. 21 (1); 1978, c. 50, s. 7.

(2) A patient who is being returned under subsection (1) may be detained in an appropriate place in the course of his return.

Detention during return

(3) For the purposes of this Act, a patient who is returned under subsection (1) may be detained for the remainder of the period of detention to which he was subject when his absence became known to the officer in charge.

Period of detention upon return

(4) Where a patient is not returned within one month after his absence became known to the officer in charge, he shall, unless subject to detention otherwise than under this Act, be deemed to be discharged from the psychiatric facility.

Where not returned

(5) No person shall do or omit to do any act for the purpose of aiding, assisting, abetting or counselling a patient in a psychiatric facility to be absent without authorization. R.S.O. 1970, c. 269, s. 21 (2-5).

Prohibitions

Transfer
of patients
from one
facility to
another

23.—(1) Upon the advice of the attending physician, the officer in charge of a psychiatric facility may, if otherwise permitted by law and subject to arrangements being made with the officer in charge of another psychiatric facility, transfer a patient to such other psychiatric facility upon completing a memorandum of transfer in the prescribed form.

Authority
to detain

(2) Where a patient is transferred under subsection (1), the authority to detain him continues in force in the psychiatric facility to which he is so transferred. R.S.O. 1970, c. 269, s. 22.

Treatment
in public
hospital

24.—(1) Upon the advice of the attending physician that a patient requires hospital treatment that cannot be supplied in the psychiatric facility, the officer in charge may, if otherwise permitted by law, transfer the patient to a public hospital for such treatment and return him to the psychiatric facility upon the conclusion thereof.

Powers of
superin-
tendent

(2) Where a patient is transferred under subsection (1), the superintendent of the public hospital has, in addition to the powers conferred upon him by the Act under which the hospital operates, the powers under this Act of an officer in charge of a psychiatric facility in respect of the custody and control of the patient. R.S.O. 1970, c. 269, s. 23.

Transfer of
patients to
institutions
outside
Ontario

25. Where it appears to the Minister,

- (a) that a patient in a psychiatric facility has come or been brought into Ontario from elsewhere and his hospitalization is the responsibility of another jurisdiction; or
- (b) that it would be in the best interests of a patient in a psychiatric facility to be hospitalized in another jurisdiction,

the Minister may, upon compliance in Ontario with necessary modifications with the laws respecting hospitalization in such other jurisdiction, by warrant in the prescribed form authorize his transfer thereto. R.S.O. 1970, c. 269, s. 24.

Mentally
disordered
person
coming into
Ontario

26. Where the Minister has reasonable cause to believe that there may come or be brought into Ontario a person suffering from mental disorder of a nature or quality that likely will result in,

- (a) serious bodily harm to the person; or
- (b) serious bodily harm to another person,

unless the person is placed in the custody of a psychiatric facility, the Minister by an order in the prescribed form may authorize any one to take the person in custody to a psychiatric facility and the order is authority to admit, detain, restrain, observe and examine the person in the psychiatric facility. 1978, c. 50, s. 8.

27. A constable or other peace officer or any one who takes a person in custody to a psychiatric facility shall remain at the facility and retain custody of the person so taken until the facility accepts the custody of the person. 1978, c. 50, s. 9.

Duty of
constable,
other peace
officer or
other person

28.—(1) A patient shall be discharged from a psychiatric facility when he is no longer in need of the observation, care and treatment provided therein.

Discharge
of patients

(2) Subsection (1) does not authorize the discharge into the community of a patient who is subject to detention otherwise than under this Act. R.S.O. 1970, c. 269, s. 26.

Exception

29.—(1) In this section,

Interpre-
tation

(a) “clinical record” means the clinical record compiled in a psychiatric facility in respect of a patient, and includes a part of a clinical record;

(b) “patient” includes former patient, out-patient, and former out-patient.

(2) Except as provided in subsections (3) and (5), no person shall disclose, transmit or examine a clinical record.

Disclosure
of clinical
record

(3) The officer in charge and the attending physician in the psychiatric facility in which a clinical record was prepared may examine the clinical record and the officer in charge may disclose or transmit the clinical record to or permit the examination of the clinical record by,

Idem

(a) where the patient has attained the age of majority and is mentally competent, any person with the consent of the patient;

(b) where the patient has not attained the age of majority or is not mentally competent, any person with the consent of the nearest relative of the patient;

(c) any person employed in or on the staff of the psychiatric facility for the purpose of assessing or

treating or assisting in assessing or treating the patient;

- (d) the chief executive officer of a health facility that is currently involved in the direct health care of the patient upon the written request of the chief executive officer to the officer in charge;
- (e) with the consent of the patient or, where the patient has not attained the age of majority or is not mentally competent, with the consent of the nearest relative of the patient or, where delay in obtaining the consent of either of them would endanger the life, a limb or a vital organ of the patient, without the consent of either of them, a person currently involved in the direct health care of the patient in a health facility;
- (f) a person for the purpose of research, academic pursuits or the compilation of statistical data.

Use of
material
in clinical
record for
research,
study or
statistics

(4) Where a clinical record,

- (a) is transmitted or copied for use outside the psychiatric facility for the purpose of research, academic pursuits or the compilation of statistical data, the officer in charge shall remove from the part of the clinical record that is transmitted or from the copy, as the case may be, the name of and any means of identifying the patient; and
- (b) is disclosed to or examined by a person for the purpose of research, academic pursuits or the compilation of statistical data, the person shall not disclose the name of or any means of identifying the patient and shall not use or communicate the information or material in the clinical record for a purpose other than research, academic pursuits or the compilation of statistical data.

Disclosure
pursuant to
subpoena

(5) Subject to subsections (6) and (7), the officer in charge or a person designated in writing by the officer in charge shall disclose, transmit or permit the examination of a clinical record pursuant to a subpoena, order, direction, notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any Act.

Statement
by attending
physician

(6) Where the disclosure, transmittal or examination of a clinical record is required by a subpoena, order, direction,

notice or similar requirement in respect of a matter in issue or that may be in issue in a court of competent jurisdiction or under any Act and the attending physician states in writing that he is of the opinion that the disclosure, transmittal or examination of the clinical record or of a specified part of the clinical record,

- (a) is likely to result in harm to the treatment or recovery of the patient; or
- (b) is likely to result in,
 - (i) injury to the mental condition of a third person, or
 - (ii) bodily harm to a third person,

no person shall comply with the requirement with respect to the clinical record or the part of the clinical record specified by the attending physician except under an order of,

- (c) the court before which the matter is or may be in issue; or
- (d) where the disclosure, transmittal or examination is not required by a court, under an order of the Divisional Court,

made after a hearing from which the public is excluded and that is held on notice to the attending physician.

(7) On a hearing under subsection (6), the court or body shall consider whether or not the disclosure, transmittal or examination of the clinical record or the part of the clinical record specified by the attending physician

Matters
to be
considered by
court or body

- (a) is likely to result in harm to the treatment or recovery of the patient; or
- (b) is likely to result in,
 - (i) injury to the mental condition of a third person, or
 - (ii) bodily harm to a third person,

and for the purpose the court or body may examine the clinical record, and, if satisfied that such a result is likely,

the court or body shall not order the disclosure, transmittal or examination unless satisfied that to do so is essential in the interests of justice.

Return of
clinical
record to
officer in
charge

(8) Where a clinical record is required pursuant to subsection (5) or (6), the clerk of the court or body in which the clinical record is admitted in evidence or, if not so admitted, the person to whom the clinical record is transmitted shall return the clinical record to the officer in charge forthwith after the determination of the matter in issue in respect of which the clinical record was required.

Disclosure
in action or
proceeding

(9) No person shall disclose in an action or proceeding in any court or before any body any knowledge or information in respect of a patient obtained in the course of assessing or treating or assisting in assessing or treating the patient in a psychiatric facility or in the course of his employment in the psychiatric facility except,

- (a) where the patient has attained the age of majority and is mentally competent, with the consent of the patient;
- (b) where the patient has not attained the age of majority or is not mentally competent, with the consent of the nearest relative of the patient; or
- (c) where the court or, in the case of a proceeding not before a court, the Divisional Court determines, after a hearing from which the public is excluded and that is held on notice to the patient or (where the patient has not attained the age of majority or is not mentally competent) the nearest relative of the patient, that the disclosure is essential in the interests of justice. 1978, c. 50, s. 10.

Review
boards

30.—(1) The Lieutenant Governor in Council may appoint a review board for any one or more psychiatric facilities.

Composition

(2) A review board shall be composed of three or five members, at least one and not more than two of whom are psychiatrists and at least one and not more than two of whom are barristers and solicitors and at least one of whom is not a psychiatrist or a barrister and solicitor.

Chairman

(3) The Lieutenant Governor in Council may designate one of the members of a review board as chairman.

(4) The Lieutenant Governor in Council may appoint ^{Alternate members} alternate members to a review board, and, where for any reason a member cannot act, the alternate member appropriate to comply with subsection (2) shall act in his stead.

(5) An officer or servant of, or a person with a direct ^{Disqualification} financial interest in, a psychiatric facility shall not act as a member of a review board when the case of a patient of that facility is being reviewed.

(6) A member shall hold office for the period, not to ^{Term of office} exceed three years, specified in his appointment, but is eligible for reappointment at the expiration of his term of office.

(7) A psychiatrist and a barrister and solicitor and another ^{Quorum} member who is not a psychiatrist or a barrister and solicitor constitute a quorum, and the decision of a majority is the decision of the review board. R.S.O. 1970, c. 269, s. 27.

31.—(1) An involuntary patient, or any person on his behalf, ^{Application for review by patient, etc.} may apply in the prescribed form to the chairman of the regional review board having jurisdiction to inquire into whether the patient is suffering from mental disorder of a nature or quality that likely will result in,

- (a) serious bodily harm to the patient;
- (b) serious bodily harm to another person; or
- (c) imminent and serious physical impairment of the patient,

unless the patient remains an involuntary patient in the custody of a psychiatric facility.

- (2) An application under subsection (1) may be made, ^{When application may be made}
- (a) when a certificate of involuntary admission respecting the patient comes into force;
 - (b) when any certificate of renewal respecting the patient comes into force; or
 - (c) when the patient, after having been admitted to a psychiatric facility, is subsequently continued as an involuntary patient.

Application
for review
by Minister,
etc.

(3) An application under subsection (1) may be made at any time by the Minister, the Deputy Minister or the officer in charge in respect of any involuntary patient.

Where notice
deemed to
have been
given

(4) On the completion of a fourth certificate of renewal and on the completion of every fourth certificate of renewal thereafter, the patient shall be deemed to have applied in the prescribed form pursuant to subsection (1) to the chairman of the regional review board having jurisdiction. 1978, c. 50, s. 11, *part*.

Inquiry and
hearing

32.—(1) Upon receipt of an application by the chairman, the review board shall conduct such inquiry as it considers necessary to reach a decision and may hold a hearing, which in the discretion of the review board may be *in camera*, for the purpose of receiving oral testimony.

Attendance
of patient
at hearing

(2) Where a hearing is held, the patient may attend the hearing unless otherwise directed by the chairman and, where he does not attend, he may have a person appear as his representative.

Rights of
patient at
hearing

(3) Where a hearing is held, the patient or his representative may call witnesses and make submissions and, with the permission of the chairman, may cross-examine witnesses.

Information,
reports, etc.

(4) The officer in charge shall, for the purpose of an inquiry, furnish the chairman with such information and reports as the chairman requests.

Interview
may be
private

(5) The review board or any member thereof may interview a patient or other person in private. R.S.O. 1970, c. 269, s. 29.

Report

33.—(1) Upon the conclusion of an inquiry, the chairman shall prepare a written report of the decision of the review board and within the time prescribed by the regulations transmit a copy thereof to the applicant and to the officer in charge where he is not the applicant.

Implemen-
tation of
report

(2) Upon receipt of a copy of the decision, the officer in charge shall take any action required to give effect thereto. R.S.O. 1970, c. 269, s. 30.

Advisory
review
boards

34.—(1) The Lieutenant Governor in Council may appoint an advisory review board for any one or more psychiatric facilities that has a review board.

(2) An advisory review board shall be composed of a judge or a retired judge of the Supreme Court who shall serve as chairman, a psychiatrist and any three members who constitute a quorum of the review board. Composition

(3) Subsections 30 (4), (5) and (6) apply with necessary modifications to the members of an advisory review board. Alternate members, etc.

(4) The five members of an advisory review board constitute a quorum and the recommendation of a four-fifths majority is the recommendation of the advisory review board. Quorum

(5) The case of every patient in a psychiatric facility who is detained under the authority of a warrant of the Lieutenant Governor under the *Criminal Code* (Canada) shall be considered by the advisory review board having jurisdiction once in every year, commencing with the year next after the year in which the warrant was issued. Functions
R.S.C. 1970,
c. C-34

(6) Notwithstanding subsection (5), the advisory review board shall consider the case of any patient to which that subsection applies at any time upon the written request of the Minister. Idem

(7) Section 32 applies with necessary modifications to cases under this section. Application
of s. 32

(8) Upon the conclusion of an inquiry, the chairman shall prepare a written report of the recommendations of the advisory review board and, within the time prescribed by the regulations, shall transmit a copy thereof to the Lieutenant Governor in Council, and may in his discretion transmit a copy thereof to any other person. Report R.S.O. 1970, c. 269, s. 31.

35.—(1) In this section, “psychosurgery” means any procedure that, by direct or indirect access to the brain, removes, destroys or interrupts the continuity of histologically normal brain tissue, or which inserts indwelling electrodes for pulsed electrical stimulation for the purpose of altering behaviour or treating psychiatric illness, but does not include neurological procedures used to diagnose or treat organic brain conditions or to diagnose or treat intractable physical pain or epilepsy where these conditions are clearly demonstrable. Interpretation

(2) Psychiatric treatment shall not be given to an involuntary patient without the consent of the patient or, where the patient has not reached the age of majority or is Consent to treatment

not mentally competent, the consent of the nearest relative of the patient except under the authority of an order of a regional review board made on the application of the officer in charge.

Consent to
psycho-
surgery

(3) The consent of an involuntary patient or the nearest relative of an involuntary patient to treatment while an involuntary patient does not include and shall not be deemed to include psychosurgery.

Application
to regional
review
board

(4) Where,

(a) an involuntary patient or the nearest relative of an involuntary patient, as the case requires, refuses consent or an involuntary patient is not mentally competent and there is no relative of the patient from whom consent may be requested to the provision of a specific psychiatric treatment or a specific course of psychiatric treatment to the patient; and

(b) the attending physician, a psychiatrist who is a member and a psychiatrist who is not a member of the medical staff of the psychiatric facility in which the patient is detained each state in the prescribed form;

(i) that he has examined the patient,

(ii) that he is of the opinion that the mental condition of the patient will be or is likely to be substantially improved by the specific psychiatric treatment or the specific course of psychiatric treatment, and

(iii) that the mental condition of the patient will not or is not likely to improve without the specific treatment or course of treatment,

the attending physician on notice to the patient or the nearest relative, as the case requires, may apply to the regional review board for an order authorizing the providing of the treatment or course of treatment to the patient.

Hearing

(5) Where the attending physician applies for a hearing under subsection (4), the regional review board shall appoint a time for and hold the hearing and shall issue its decision

within seven days after the completion of the hearing and, where the board is satisfied,

- (a) that the mental condition of the patient will be or is likely to be substantially improved by the specific psychiatric treatment or course of treatment for the providing of which authority is sought; and
- (b) that the mental condition of the patient will not or is not likely to improve without the specific psychiatric treatment or course of treatment,

the board by order may authorize the providing of the psychiatric treatment or course of treatment specified in the application, but the board shall not authorize and no order of the board is or shall be deemed to be authority to perform psychosurgery.

(6) The attending physician and the patient or, where the ^{Parties} patient is not mentally competent, the nearest relative or, if none, the Official Guardian and such other persons as the regional review board may specify are parties to the proceedings before the board. 1978, c. 50, s. 12.

PART III

ESTATES

36.—(1) Forthwith upon the admission of a patient to a ^{Examination as to competency to manage estate upon admission} psychiatric facility, a physician shall examine the patient to determine whether or not he is competent to manage his estate.

(2) The attending physician may examine a patient and ^{Idem} a physician may examine an out-patient at any time to determine whether or not the patient or out-patient is competent to manage his estate.

(3) After an examination under subsection (1) or (2), the physician or attending physician, as the case may be, shall enter his determination, together with written reasons therefor, ^{Entry of determination and reasons in clinical record} in the clinical record prepared in respect of the patient.

Certificate of
incompetence

(4) A physician or attending physician who performs an examination under subsection (1) or (2) and who is of the opinion that the patient or out-patient is not competent to manage his estate shall issue a certificate of incompetence in the prescribed form and the officer in charge shall transmit the certificate to the Public Trustee.

Idem,
exceptional
circum-
stances

(5) Where circumstances are such that the Public Trustee should immediately assume management of an estate, the officer in charge or, where the officer in charge is not present in the psychiatric facility, the physician or attending physician shall notify the Public Trustee in the fastest manner possible that a certificate of incompetence has been issued.

Appointment
by patient

(6) A patient or out-patient may appoint the Public Trustee as committee of the estate of the patient or out-patient.

Idem

(7) An appointment under subsection (6),

(a) is not valid unless it is signed and sealed by the patient or out-patient; and

(b) may be revoked by a written revocation signed and sealed by the patient or out-patient.

Where Public
Trustee is
committee
at time of
admission
or receipt
of patient or
out-patient

(8) Where the Public Trustee is committee of the estate of a patient or out-patient at the time of his admission to or receipt in a psychiatric facility, a certificate of incompetence shall be deemed to have been issued and transmitted to the Public Trustee under subsection (4).

Where
subs. (1-8)
do not
apply

(9) Subsections (1) to (8) do not apply to a patient or out-patient whose estate is under committeehip under the *Mental Incompetency Act*. 1978, c. 50, s. 13, *part*.

Where Public
Trustee may
replace
committee
appointed
under
R.S.O. 1980,
c. 264

37.—(1) Notwithstanding that under the *Mental Incompetency Act* a person other than the Public Trustee has been appointed as the committee of the estate of a patient or out-patient, the Supreme Court may at any time upon the application of the Public Trustee appoint him as committee in the stead of the person appointed under that Act, and on appointment the Public Trustee has and may exercise all the rights and powers conferred upon him by this Act with regard to the management of estates.

Duty of
Public Trustee
where
committee
appointed
under
R.S.O. 1980,
c. 264

(2) If at any time a committee of the estate of a patient or out-patient is appointed under the *Mental Incompetency Act*, the Public Trustee thereupon ceases to be committee and shall account for and transfer to the committee so appointed

the estate of the patient or out-patient that has come into his hands.

(3) An order shall not be made under the *Mental Incompetency Act* for the appointment of a committee of a patient or out-patient without the consent of the Public Trustee unless seven days notice of the application has been given to him. Consent of Public Trustee to order R.S.O. 1980, c. 264

(4) The acts of the Public Trustee while committee of a patient or out-patient are not rendered invalid by the making of an order appointing another committee. 1978, c. 50, s. 13, *part.* Acts of Public Trustee not affected

38. The Public Trustee is committee of the estate of a patient or out-patient and shall assume management thereof, Where Public Trustee committee

(a) upon receipt of a certificate of incompetence;

(b) upon receipt of notice under subsection 36 (5);

(c) upon receipt of an appointment under subsection 36 (6);
or

(d) upon receipt of a notice of continuance under section 41. 1978, c. 50, s. 13, *part.*

39. Upon the Public Trustee becoming committee of the estate of a patient or out-patient, the officer in charge shall forthwith forward a financial statement in the prescribed form to the Public Trustee. 1978, c. 50, s. 13, *part.* Financial statement

40. The attending physician may, after examining a patient or out-patient for that purpose, cancel the certificate of incompetence issued in respect of the patient or out-patient and the officer in charge shall forward a notice of cancellation in the prescribed form to the Public Trustee. 1978, c. 50, s. 13, *part.* Cancellation of certificate of incompetence

41.—(1) Where the Public Trustee is managing the estate of a patient or out-patient, the attending physician shall examine the patient or out-patient within twenty-one days before he is discharged from a psychiatric facility to determine whether or not he will be competent to manage his estate. Examination as to competency before discharge

(2) Where the attending physician is of the opinion, after the examination referred to in subsection (1), that the patient or out-patient will not, upon discharge, be competent to manage his estate, he shall issue a notice of continuance in the prescribed form and the officer in charge shall forward the notice to the Public Trustee. Notice of continuance

Where notice
of discharge
to be
transmitted
to Public
Trustee

(3) The officer in charge shall transmit to the Public Trustee notice of the discharge from the psychiatric facility of a patient or an out-patient in respect of whom a certificate of incompetence is in force. 1978, c. 50, s. 13, *part*.

Where
Public
Trustee
ceases
to be
committee

42. The Public Trustee ceases to be committee of the estate of a patient or out-patient and shall relinquish management thereof,

- (a) upon receipt of notice of cancellation of the certificate of incompetence of the patient or out-patient;
- (b) upon receipt of a revocation in writing, signed and sealed by the patient or out-patient, of an appointment referred to in subsection 36 (6);
- (c) upon receipt of notice of discharge of the patient or out-patient, unless he has at that time received a notice of continuance; or
- (d) upon the expiration of six months after the discharge of the patient or out-patient, where a notice of continuance was received. 1978, c. 50, s. 13, *part*.

Application
to review
board as to
competency

43.—(1) Where a certificate of incompetence or a notice of continuance has been issued, the patient or out-patient may apply in the prescribed form to the chairman of the review board having jurisdiction to inquire into whether or not the patient or out-patient is competent to manage his estate. 1978, c. 50, s. 14 (1).

Application
of ss. 31-33

(2) Except that applications may be made not more frequently than once in any six-month period, sections 31, 32 and 33 apply with necessary modifications to applications under subsection (1). R.S.O. 1970, c. 269, s. 39 (2); 1978, c. 50, s. 14 (2).

Leave of
judge to
bring action

44. No person, other than the Public Trustee, shall bring an action as next friend of a person of whose estate the Public Trustee is committee under this Act or by an order made under this Act without the leave of a judge of the court in which the action is intended to be brought, and the Public Trustee shall be served with notice of the application for such leave. R.S.O. 1970, c. 269, s. 40.

Service of
documents

45. Where an action or proceeding is brought or taken against a person,

- (a) who is a patient or out-patient; and

- (b) for whose estate a committee has not been appointed by a court,

and the action or proceeding is in connection with the estate of the person, the writ or other document by which the action or proceeding is commenced and any other document requiring personal service,

- (c) shall be endorsed with the name of the psychiatric facility in or of which the person is a patient or out-patient;

- (d) shall be served,

- (i) on the Public Trustee, and

- (ii) on the person, or, where the attending physician is of the opinion that personal service on the person would cause or would be likely to cause serious harm to him by reason of his mental condition, on the officer in charge. 1978, c. 50, s. 15, *part*.

46. The Public Trustee as committee of a patient or out-patient has and may exercise all the rights and powers with regard to the estate of the patient or out-patient that the patient or out-patient would have if of full age and of sound and disposing mind. 1978, c. 50, s. 15, *part*.

Rights and powers of Public Trustee as committee

47. A person of whose estate the Public Trustee is committee under this Act or by an order made under this Act and his heirs, executors, administrators, next of kin, legatees, devisees and assigns shall have the same interest in any money or other property, real or personal, arising from a sale, mortgage, exchange or other disposition by the Public Trustee acting as such committee as they would have had in the property the subject of the sale, mortgage, exchange or other disposition if no sale, mortgage, exchange or other disposition had been made, and the surplus money or property shall be of the same nature as the property sold, mortgaged, exchanged or disposed of. R.S.O. 1970, c. 269, s. 43.

Nature of proceeds of sale, etc.

48. Upon the Public Trustee becoming committee of the estate of a person under this Act or by an order made under this Act, every power of attorney of such person is void. R.S.O. 1970, c. 269, s. 44.

When powers of attorney void

49. A recital in a lease, mortgage or conveyance that a person is a patient in or an out-patient of a psychiatric facility and that the Public Trustee is his committee is

Recitals in documents

admissible in evidence as *prima facie* proof of the facts recited. 1978, c. 50, s. 15, *part*.

Purposes
for which
powers of
Public
Trustee
may be
exercised

50. The powers conferred upon the Public Trustee as committee of the estate of a patient or out-patient may be exercised,

- (a) until the committeehip is terminated notwithstanding that the patient or out-patient has been discharged from the psychiatric facility;
- (b) to carry out and complete any transaction entered into by the patient or out-patient before he became a patient or out-patient in a psychiatric facility;
- (c) to carry out and complete any transaction entered into by the committee notwithstanding that the committeehip has been terminated or that the patient or out-patient has died after the transaction was commenced. 1978, c. 50, s. 15, *part*.

Lien of
Public
Trustee for
costs, etc.

51.—(1) The costs, charges and expenses of the Public Trustee, including the costs, charges and expenses of or arising from or out of the passing of his accounts, whether before or after the termination of the committeehip or the death of the person of whose estate he is committee under this Act or by an order made under this Act, and any moneys advanced or liability incurred by him for or on behalf of such person or for the maintenance of such person's family are a lien upon the real and personal property of such person.

Notice of
lien in
case of real
property

(2) In the case of real property, the Public Trustee may register in the proper land registry office a certificate under his hand and seal of office giving notice of the lien claimed and the real property against which it is claimed.

Withholding
of moneys
to secure
costs

(3) Where the Public Trustee is proceeding to have his accounts passed after the termination of the committeehip or the death of a person referred to in subsection (1), the Public Trustee may withhold sufficient moneys from the person's estate to adequately secure the costs of or arising from or out of the passing of such accounts. R.S.O. 1970, c. 269, s. 47.

When gifts,
etc., deemed
fraudulent

52. Where the Public Trustee is committee of the estate of a patient or out-patient, every gift, grant, alienation, conveyance or transfer that is not made for full and valuable consideration actually paid or secured or that is made at or after the time when the purchaser or transferee had notice of

the mental condition of the patient or out-patient, of the fact that he was a patient or out-patient or of the committee-ship shall be deemed to be fraudulent and void as against the Public Trustee. 1978, c. 50, s. 15, *part*.

53. Upon the death of a patient or out-patient of whose estate the Public Trustee is committee and until letters probate of the will or letters of administration of the estate of the patient or out-patient are granted to a person other than the Public Trustee and notice thereof is given to the Public Trustee, the Public Trustee may continue to manage the estate and exercise with respect thereto the powers that an executor would have if the property were devised or bequeathed to him in trust for payment of debts and distribution of the residue. 1978, c. 50, s. 15, *part*.

Death of
patient or
out-patient

54. The Public Trustee is liable to render an account as to the manner in which he has managed the property of a patient or an out-patient in the same way and subject to the same responsibility as any trustee, guardian or committee duly appointed for a similar purpose may be called upon to account, and is entitled from time to time to bring in and pass his accounts and tax costs in like manner as a trustee but is personally liable only for wilful misconduct. 1978, c. 50, s. 15, *part*.

Passing of
accounts

55. The Public Trustee may be allowed compensation for services rendered as committee of the estate of a patient or out-patient in an amount not exceeding the amount that a trustee would be allowed for like services, but in cases of poverty or hardship the Public Trustee may forego any claim for compensation. 1978, c. 50, s. 15, *part*.

Compensa-
tion of
Public
Trustee

56.—(1) Where a person with respect to whom a notice of continuance has been received by the Public Trustee may not, based upon a report of the attending physician or other evidence available to the Public Trustee, be competent to manage his estate upon the termination of the committee-ship or a person discharged has refused or neglected to take his property or any part thereof from the Public Trustee, the Public Trustee may apply to the Divisional Court for directions as to the disposal of such property, and the court may make such order as it considers just, and may in its discretion order that the Public Trustee continue to manage the estate of such person with all the rights and powers that the Public Trustee would have had under this Act if the committee-ship had not been terminated. R.S.O. 1970, c. 269, s. 52 (1).

Application
for
directions

Application
for
continuance
of com-
mitteeship

(2) Where the Divisional Court is satisfied, on application by the Public Trustee with notice to the person, that a person who was discharged as a patient or out-patient subject to a notice of continuance will continue to be incompetent to manage his estate after the expiry of the notice of continuance, the court by order may extend the committeeship of the Public Trustee for such period of time, or may make such other order, as the court considers proper.

Further
orders

(3) Where the Public Trustee continues to manage an estate under subsection (1) or (2), the Divisional Court, upon application, may make such further order as it considers just and, in its discretion, may order that the management of the estate by the Public Trustee be relinquished. 1978, c. 50, s. 16.

Payments
out of
patient's or
out-patient's
moneys

57. The Public Trustee, out of the moneys in his hands belonging to a person who is a patient or out-patient of whose estate the Public Trustee is committee, shall pay the proper charges for maintenance of the person as a patient in or an out-patient of the psychiatric facility and the Public Trustee may also pay such sums as he considers advisable to the patient's or out-patient's family or other persons dependent upon him, and the payments for the maintenance of the family and other dependants may be made notwithstanding that such payments may prevent the payment of maintenance that otherwise would be due from the patient or out-patient. 1978, c. 50, s. 17, *part.*

Payments
out of
moneys
in court

58. Moneys in court to the credit of a patient or out-patient of whose estate the Public Trustee is committee shall be paid out to the Public Trustee upon his written application, and it is not necessary to obtain an order of a court or a judge for such purpose. 1978, c. 50, s. 17, *part.*

What
Public
Trustee not
required
to do

59. Nothing in this Act makes it the duty of the Public Trustee to institute proceedings on behalf of a patient or out-patient of whose estate the Public Trustee is committee or to intervene in respect of the estate or any part thereof or to take charge of any property of the patient or out-patient. 1978, c. 50, s. 17, *part.*

Patients or
out-patients
in another
province
with estate
in Ontario

60.—(1) Where a person who is suffering from a mental disorder is a patient in or an out-patient of a psychiatric facility in another province or territory of Canada and has estate situate in Ontario, the Lieutenant Governor in Council may appoint the official of the other province or territory who is charged with the duty of managing the estate of the person in the other province or territory to be committee of the estate in Ontario. 1978, c. 50, s. 18.

(2) The order making the appointment is conclusive proof that all the conditions precedent to the appointment have been fulfilled. Order conclusive

(3) The appointee under such an order possesses the same rights, powers, privileges and immunities as are conferred by this Act upon the Public Trustee and he is subject to the same obligations and shall perform the same duties. R.S.O. 1970, c. 269, s. 56 (2, 3). Rights and powers of appointee

PART IV

VETERANS, ETC.

61. The Lieutenant Governor in Council may authorize an agreement between Her Majesty the Queen in right of Ontario represented by the Minister and Her Majesty the Queen in right of Canada represented by the Minister of any department of the Government of Canada that is from time to time charged with the observation, care and treatment of persons who are suffering from a mental disorder whereunder that department may establish, operate, maintain, control and direct in Ontario psychiatric facilities within the meaning of this Act for the observation, care and treatment of such persons, and where such an agreement is made, it may provide that the provisions of Parts II and III of this Act and the relevant regulations, or any of them, apply with necessary modifications. R.S.O. 1970, c. 269, s. 57. Agreement with Government of Canada authorized

PART V

MISCELLANEOUS

62. All actions, prosecutions or other proceedings against any person or psychiatric facility for anything done or omitted to be done in pursuance or intended pursuance of this Act or the regulations shall be commenced within six months after the act or omission complained of occurred and not afterwards. R.S.O. 1970, c. 269, s. 58. Limitation of actions, etc.

63. No action lies against any psychiatric facility or any officer, employee or servant thereof for a tort of any patient. R.S.O. 1970, c. 269, s. 59. Certain actions barred

64. Every person who contravenes any provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. 1978, c. 50, s. 19. Offence

Regulations

65.—(1) The Lieutenant Governor in Council may make regulations,

- (a) designating and classifying psychiatric facilities, and exempting any psychiatric facility or class thereof from the application of any provision of the regulations made under clause (b);
- (b) in respect of psychiatric facilities or any class thereof,
 - (i) providing for the creation, establishment, construction, alteration, renovation and maintenance thereof,
 - (ii) prescribing the accommodation, facilities, equipment and services thereof,
 - (iii) providing for the government, management, conduct, operation, use and control thereof,
 - (iv) providing for the officers and staff and prescribing their qualifications,
 - (v) prescribing the forms, records, books, returns and reports to be made and kept in connection therewith and providing for returns, reports and information to be furnished to the Ministry;
- (c) prescribing additional duties of officers designated and persons appointed under subsection 5 (1);
- (d) prescribing the classes of grants by way of provincial aid to any psychiatric facility or class thereof and the methods of determining the amounts of grants and providing for the manner and times of payment and the suspension and withholding of grants and for the making of deductions from grants;
- (e) exempting any psychiatric facility or class thereof from the application of Part II;
- (f) classifying patients, and limiting the classes of patients that may be admitted to any psychiatric facility or class thereof;
- (g) respecting the examination and detention of persons and the admission, detention, leave of absence, absence without authorization, transfer, discharge and placement of patients;

- (*h*) prescribing the manner in which applications may be made to a review board;
- (*i*) governing and regulating hearings and other proceedings of review boards and advisory review boards;
- (*j*) prescribing the time in which decisions of review boards or recommendations of advisory review boards shall be transmitted;
- (*k*) providing for the remuneration and expenses of members of review boards and advisory review boards;
- (*l*) conferring ancillary functions upon review boards and advisory review boards;
- (*m*) exempting any psychiatric facility or class thereof from the application of Part III;
- (*n*) prescribing forms and providing for their use;
- (*o*) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 269, s. 61 (1); 1972, c. 1, s. 1.

(2) Where, in the opinion of the Minister,

Relief from
compliance

- (*a*) it is impracticable for a psychiatric facility to comply with any provision of the regulations made under clause (1) (*b*); and
- (*b*) it is in the best interests of the population served by such psychiatric facility,

he may, by his authorization in writing, relieve such psychiatric facility from the application of such provision for such period and upon such conditions as he specifies in the authorization.

(3) The *Regulations Act* does not apply to an authorization of the Minister made under subsection (2). R.S.O. 1970, c. 269, s. 61 (2, 3). R.S.O. 1980,
c. 446 not
to apply

PART VI

UNPROCLAIMED AMENDMENTS

66. On a day to be named by proclamation of the Lieutenant Governor, Part II is amended by adding thereto the following section: Part II.
amended

Notice of
certificate
to be
given or
transmitted
to patient

30a.—(1) An attending physician who completes a certificate of involuntary admission or a certificate of renewal shall give or transmit a notice in writing of completion and filing of the certificate to the patient who is the subject of the certificate and to the area director for the area, in accordance with the *Legal Aid Act*, in which the psychiatric facility is located.

R.S.O. 1980,
c. 234

Notice

(2) A notice under subsection (1) shall inform the patient and the area director that the patient or any person on his behalf is entitled to a hearing by the regional review board if the patient or the person gives or transmits to the officer in charge or to the regional review board notice in writing requiring a hearing and the patient or the person may so require such a hearing. 1978, c. 50, s. 11, *part*.

ss. 32, 33,
re-enacted

67. On a day to be named by proclamation of the Lieutenant Governor, sections 32 and 33 are repealed and the following substituted therefor:

Effective-
ness of
certificate

32. Notwithstanding that a hearing is required or an appeal is taken against a certificate of involuntary admission or a certificate of renewal, the certificate is effective until confirmed or rescinded on a hearing or appeal. 1978, c. 50, s. 11, *part*.

Parties

33. The attending physician, the patient or other person who has required the hearing and such other persons as the regional review board may specify are parties to the proceedings before the board. 1978, c. 50, s. 11, *part*.

Transmittal
of notice
by officer
in charge

33a. Where a patient or other person gives or transmits to the officer in charge a notice in writing pursuant to subsection 30a (2), the officer in charge shall transmit the requirement to the regional review board. 1978, c. 50, s. 11, *part*.

Appoint-
ment of
time and
place for
hearing

33b. A regional review board that received notice in writing requiring a hearing under subsection 30a (2) or under section 33a shall appoint a time and place for and hold the hearing. 1978, c. 50, s. 11, *part*.

Powers
of board

33c. Within seven days from the day that a regional review board completes a hearing under section 33b, the board by an order in writing shall confirm or revoke the certificate of involuntary admission or the certificate of renewal and for the purpose the board may substitute its opinion for that of the attending physician. 1978, c. 50, s. 11, *part*.

Examination
of
documentary
evidence

33d.—(1) A party to a proceeding shall be afforded an opportunity to examine and to copy, before the hearing, any written or documentary evidence that will be produced

or any report, the contents of which will be produced or any report, the contents of which will be given in evidence at the hearing.

(2) Subject to section 29, a party to a proceeding or the counsel or agent representing the party, or both, is entitled to examine and to copy any clinical record prepared in respect of the patient. 1978, c. 50, s. 11, *part*. Party may examine clinical record

33e.—(1) Members of a regional review board holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except under notice to and opportunity for all parties to participate, but the regional review board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law. Members holding hearing not to have taken part in investigation, etc.

(2) No member of a regional review board shall participate in a decision of a regional review board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of a regional review board shall be given unless all members so present participate in the decision. Only members at hearing to participate in decision

(3) The findings of fact of a regional review board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*. Findings of fact

R.S.O. 1980,
c. 434

(4) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him by the regional review board within a reasonable time after the matter in issue has been finally determined. 1978, c. 50, s. 11, *part*. Release of documentary evidence

33f.—(1) A party to proceedings before a regional review board may appeal from its decision in accordance with the rules of court to the county or district court of the county or district in which is located the psychiatric facility where the patient is detained. Appeal to court

(2) Where a party appeals from a decision or order of a regional review board, the regional review board shall forthwith file in the county or district court the record of the Record to be filed in court

proceedings before it in which the decision was made, which shall constitute the record in the appeal.

Appeal on
law or
facts

(3) An appeal under this section may be made on questions of law or fact or both.

Power of
court

(4) On an appeal under this section, the court may exercise all the powers of the regional review board.

Idem

(5) For the purpose of subsection (4), the court may substitute its opinion for that of the attending physician or of the regional review board.

Idem

(6) On an appeal under this section, the court may refer the matter back to the regional review board for rehearing, in whole or in part, in accordance with such directions as the court considers proper. 1978, c. 50, s. 11, *part*.

CHAPTER 263

Mental Hospitals Act

1. In this Act and the regulations, unless the context ^{Interpre-} otherwise requires, ^{tation}

- (a) "approved home" means a home to which patients may be released from an institution in the manner provided by this Act and the regulations;
- (b) "child" includes a son and daughter;
- (c) "Deputy Minister" means the Deputy Minister of Health;
- (d) "institution" means an institution under this Act, and includes every approved home connected therewith;
- (e) "Minister" means the Minister of Health;
- (f) "Ministry" means the Ministry of Health;
- (g) "officer in charge" means the officer of the Ministry who is appointed as the superintendent or hospital administrator of an institution;
- (h) "parent" includes a father and mother;
- (i) "regulations" means the regulations made under this Act. R.S.O. 1970, c. 270, s. 1; 1972, c. 1, s. 1.

2. This Act applies to such institutions as are designated ^{Application} from time to time by the regulations. R.S.O. 1970, c. 270, s. 2. ^{to certain}
^{institutions}

3. Each institution shall be known by such name as the ^{Names of} Lieutenant Governor in Council may designate. R.S.O. ^{institutions}
1970, c. 270, s. 3.

4. The Lieutenant Governor in Council may designate any ^{Application of} provision of the *Public Hospitals Act* or of the regulations ^{R.S.O. 1980,} thereunder as being applicable to any institution under this ^{c. 410} Act. R.S.O. 1970, c. 270, s. 4.

5.—(1) The Lieutenant Governor in Council may make ^{Regulations} such regulations as are necessary for carrying out this Act and for the efficient administration thereof. R.S.O. 1970, c. 270, s. 5 (1).

Idem

(2) Without limiting the generality of subsection (1), the powers of the Lieutenant Governor in Council to make regulations in the manner set out therein extend to and include,

- (a) designating the institutions to which this Act applies;
- (b) prescribing the district to be served and classes of patient to be treated in any institution;
- (c) prescribing the powers and duties of the Deputy Minister;
- (d) providing for the appointment of officers and employees, and prescribing their powers and duties;
- (e) regulating the inspection, superintendence, government, management, conduct, operation, maintenance, care and use of institutions and equipment;
- (f) regulating the care, treatment and maintenance of patients;
- (g) classifying patients and persons and exempting any class of patients or persons from any provision of this Act;
- (h) prescribing the forms relating to patients and all other forms required for the carrying out of this Act and the regulations;
- (i) prescribing the records, books, accounting systems, audits, reports and returns to be made and kept respecting institutions;
- (j) regulating the financial business and affairs of institutions;
- (k) providing for the granting and withdrawing of certificates of approval to approved homes, and fixing the fees payable therefor;
- (l) fixing the situation, construction and equipment of approved homes;
- (m) declaring that any institution or part thereof shall be exempt from any provision of this Act or of the regulations;
- (n) prescribing the charges that shall be paid by the persons liable for the maintenance of patients in institutions;

- (o) prescribing the amounts to be paid by the Ministry for the care and maintenance of patients or former patients in approved homes;
- (p) prescribing the amounts of contributions that may be made to public hospitals by the Minister under section 10 and the manner and conditions of making such contributions;
- (q) prescribing the amounts that may be paid by the Ministry to medical practitioners who are not officers of the Ministry for the examination of persons who are or are believed to be in need of observation, care and treatment in an institution, and prescribing the terms and conditions of such payments;
- (r) prescribing the costs and expenses referred to in subsection 16 (1);
- (s) generally, the control of all other matters in any way relating to institutions, and respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 270, s. 5 (2); 1972, c. 1, s. 1.

ADMINISTRATION AND CONTROL

6.—(1) The administration of this Act and of every institution thereunder is vested in the Ministry, and the Deputy Minister is the chief executive officer of the Ministry and is responsible to and subject to the control of the Minister. R.S.O. 1970, c. 270, s. 6 (1); 1972, c. 1, s. 1.

Adminis-
tration
vested
in the
Ministry

(2) Where this Act and the regulations require or authorize the Deputy Minister to do any act, such act may be done by any person whom the Deputy Minister appoints to do such act. R.S.O. 1970, c. 270, s. 6 (2).

Delegation
of authority
by Deputy
Minister

7.—(1) Subject to section 6, the officer in charge of an institution is in charge of and has control over the institution for which he is appointed, and shall superintend the conduct and management of all its affairs and control all officers, clerks, servants and employees thereof and all the patients therein.

Officer in
charge to
control the
institution

(2) Where this Act or the regulations require or authorize the officer in charge of an institution to do any act, such act may be done by any person whom the officer in charge appoints to do such act. R.S.O. 1970, c. 270, s. 7.

Delegation
of powers
and duties

Offences
and
penalties

8. Every person who contravenes any provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not less than \$10 and not more than \$100. R.S.O. 1970, c. 270, s. 8.

Limitation
of actions

9. All actions and prosecutions against any person for anything done or omitted to be done in pursuance of this Act shall be commenced within six months after the act or omission complained of has been committed, and not afterwards. R.S.O. 1970, c. 270, s. 9.

PATIENTS IN INSTITUTIONS

Contribu-
tions by
Ontario

10. The Minister, out of the moneys appropriated by the legislature for the purpose, may contribute toward the cost of treatment in public hospitals of indigent patients transferred thereto in such amounts, in such manner and under such conditions as are prescribed by the regulations. R.S.O. 1970, c. 270, s. 10.

Inquiry
by Deputy
Minister

11.—(1) Where the Deputy Minister is authorized by the Minister to institute an inquiry into the management or affairs of an institution, or into any matter in connection therewith, or into the truth of any returns made by any officer thereof, the Deputy Minister has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the inquiry as if it were an inquiry under that Act. 1971, c. 50, s. 57.

R.S.O. 1980,
c. 411

Inspector
appointed
under
other Act

(2) An inspector appointed under any other Act, the administration of which is under the charge of the Minister, may when authorized by the Minister exercise the powers conferred by subsection (1) in respect of any hospital or other institution subject to such other Act. R.S.O. 1970, c. 270, s. 11 (2).

APPROVED HOMES

Certificate
for approved
home

12. The Minister may issue certificates approving of any building, premises or place as an approved home for the reception of patients who are released from an institution into the custody of such home, and entitling any person to receive into the approved home one or more patients as if such home had been established as an institution under this Act. R.S.O. 1970, c. 270, s. 12.

Release of
patients to
approved
homes

13.—(1) If the officer in charge considers it conducive to the recovery of a patient, the officer in charge may place the patient in an approved home, subject to this Act and the regulations.

(2) Subsection (1) does not authorize the placing of a patient in an approved home where he is subject to detention otherwise than under the *Mental Health Act*. R.S.O. 1970, c. 270, s. 13. Idem
R.S.O. 1980,
c. 262

14. A patient admitted to an institution who is placed in an approved home shall for the purposes of this Act and the regulations be and be deemed to continue as a patient in the institution in the same manner and to the same extent and be subject to the same control as if he were not so released but had remained in the institution. R.S.O. 1970, c. 270, s. 14. Application
of the Act
to patients
in approved
homes

LIABILITIES OF MUNICIPALITIES, MAINTENANCE; PROPERTY

15. The officer in charge may establish, maintain, operate and manage industrial rehabilitation programs for the beneficial employment and remuneration of patients and other persons, and may enter into agreements with respect to such programs and provide for remuneration in connection therewith. R.S.O. 1970, c. 270, s. 15. Industrial
rehabilita-
tion
programs

16.—(1) The costs and expenses incurred under section 10, 11, 15 or 16 of the *Mental Health Act* in determining the mental condition of a person and in conveying the person to and from an institution shall be paid by the municipality from which the person came or was sent to an institution in such amounts as are prescribed by the regulations. R.S.O. 1970, c. 270, s. 16 (1). Liability of
municipality

(2) The Lieutenant Governor in Council may make regulations exempting municipalities from costs and expenses incurred in determining the mental condition of a person under any section mentioned in subsection (1) and providing for payment of such costs and expenses by the Ministry upon such terms and conditions as may be prescribed by the regulations. R.S.O. 1970, c. 270, s. 16 (2); 1972, c. 1, s. 1. Saving

(3) Where the person is not in destitute circumstances, the costs and expenses incurred by a municipality under subsection (1) or by the Ministry under subsection (2) may be recovered by the municipality or the Ministry, as the case may be, from his estate or from him or the person liable for his maintenance. R.S.O. 1970, c. 270, s. 16 (3); 1972, c. 1, s. 1. Recovery
from
estate, etc.

(4) Subject to subsection (3), where such costs and expenses are paid by a municipality in which the person did not actually reside at the time of his admission to an institution, they may be recovered by the municipality paying them Recovery
from
municipality
where
patient
resided

from the municipality in which the person actually resided at the time of admission to an institution.

Reimbursement

(5) Such costs and expenses shall be reimbursed to the municipality by the county where the municipality paying the same is a part of the county for municipal purposes. R.S.O. 1970, c. 270, s. 16 (4, 5).

Inquiry regarding estate

17.—(1) Upon due application for the admission of a person, the officer in charge of the institution shall make a full and thorough inquiry respecting the estate, either in existence or in prospect, of the person and of its sufficiency, free from all claims of his family, to supply the means necessary for his maintenance and clothing in the institution as provided by the regulations.

Bond for maintenance

(2) The officer in charge shall where possible require from the person liable for maintenance of the patient an agreement or bond to secure the payment of the patient's maintenance, either in whole or in part, and the agreement or bond shall continue in force so long as the patient is maintained in an institution.

Liability limited

(3) Where the obligation is for a limited period, nothing herein extends the liability beyond the period limited.

Liability of patient's estate

(4) The giving of an agreement or bond in no way releases the estate of the patient from its obligation to maintain and clothe him in the institution as hereinafter provided. R.S.O. 1970, c. 270, s. 17.

Patient's liability

18. Every patient admitted to an institution who has at the time of his admission or subsequently comes into the possession of property is liable for his maintenance. R.S.O. 1970, c. 270, s. 18.

Liability for married women

19. Every person whose wife is a patient is liable for her maintenance. R.S.O. 1970, c. 270, s. 19.

Notice of liability

20.—(1) The officer in charge of an institution shall send a written notice on the first day of each of the months of January, April, July and October to the person liable for payment of the maintenance of a patient, giving the date of the patient's admission to the institution and the amount that is due and owing for his maintenance as provided by the regulations, and in the notice a demand shall be made by the officer in charge upon the person liable for payment of maintenance for such sum as is due and owing, and the sum shall be paid forthwith on the demand.

(2) In an action or other proceeding to recover a sum owing by a person, municipal corporation or the estate of a person for the maintenance of a patient, it is sufficient to prove that the officer in charge sent the notice and demand for payment referred to in subsection (1) within the three months preceding the commencement of the action or other proceeding, and no proof is required that any prior notices or demands for payment were sent. R.S.O. 1970, c. 270, s. 20.

Proof of
notice and
demand for
payment

21.—(1) In case of refusal or neglect to pay the sum so demanded, the Deputy Minister or any officer whom he designates may apply to a judge of the county or district court of the county or district in which the person liable to pay resides for an order for the payment of the amount then due.

Application
order for
payment of
maintenance

(2) Ten days notice of the application shall be given.

Notice

(3) If the judge is satisfied that the person against whom the application is made is liable, he may make an order accordingly, and the order may be enforced in the same manner as a judgment of the court. R.S.O. 1970, c. 270, s. 21.

Judge's
order

22. Notwithstanding the provisions of this Act, the Lieutenant Governor in Council may make regulations respecting the computation of the amount that is due and owing for maintenance of patients for the purpose of,

Regulations
re main-
tenance

- (a) prescribing a limit of not less than six years upon the period of time for which the amount that is due and owing for maintenance shall be computed, or otherwise reducing such amount upon such terms and conditions as are prescribed;
- (b) authorizing the Deputy Minister or other designated person to give discharges for amounts paid under the regulations. R.S.O. 1970, c. 270, s. 22.

CHAPTER 264

Mental Incompetency Act

1. In this Act,

Interpre-
tation

- (a) “contingent right”, as applied to land, includes a contingent and an executory interest, a possibility coupled with an interest whether the object of the gift or limitation or such interest or possibility is or is not ascertained, and a right of entry whether immediate or future and whether vested or contingent;
- (b) “convey” and “conveyance”, applied to a person, mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another land whereof such person is seised, or in which such person is entitled to a contingent right, either for the whole estate of such person or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance;
- (c) “court” means the county or district court of a county or district;
- (d) “land” includes messuages, tenements, and hereditaments, corporeal and incorporeal of every tenure or description, whatever may be the estate or interest therein, and whether entire or undivided;
- (e) “mentally incompetent person” means a person,
 - (i) in whom there is such a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, or
 - (ii) who is suffering from such a disorder of the mind,

that he requires care, supervision and control for his protection and the protection of his property;

- (f) "mental incompetency" means the condition of mind of a mentally incompetent person;
- (g) "mortgage" includes every interest or property in real or personal estate that is a security for money or money's worth;
- (h) "possessed" is applicable to any vested estate less than a life estate at law or in equity, in possession or in expectancy in any land;
- (i) "seised" is applicable to any vested interest for life or of a greater description, and extends to estates at law and in equity in possession or in futurity in any land;
- (j) "stock" includes shares and any fund, annuity or security transferable in books kept by a company or society, or by instrument of transfer alone, or by instrument of transfer accompanied by other formalities, and any share or interest therein, and also shares in ships registered under the Acts relating to merchant shipping;
- (k) "trust" and "trustee" include implied and constructive trusts and cases where the trustee has some beneficial interest, and also the duties incident to the office of personal representative of a deceased person, but not the duties incident to an estate conveyed by way of mortgage. R.S.O. 1970, c. 271, s. 1.

JURISDICTION OF COURT

Jurisdiction,
county and
district
courts

2.—(1) Except where otherwise provided, proceedings under this Act shall be brought in the county or district court of the county or district in which the person against whom the proceedings are to be brought has his fixed place of abode.

Idem

(2) Where the person against whom proceedings under this Act are to be brought has no fixed place of abode in Ontario, the proceedings shall, except where otherwise provided, be brought in the county or district court of any county or district in which such person has property. R.S.O. 1970, c. 271, s. 2.

Removal of
proceedings
into
Supreme
Court

3.—(1) The respondent in proceedings under this Act may, upon such notice and otherwise as the rules of court prescribe, require the proceedings to be removed into the Supreme Court.

(2) Upon the filing of the notice and proof of service thereof, the clerk of the county or district court shall forthwith transmit the papers to the proper office of the Supreme Court in the county or district in which the proceedings were brought.

(3) When the papers are received at the proper office of the Supreme Court, the proceedings are *ipso facto* in the Supreme Court and the provisions of this Act respecting such proceedings in a county or district court apply to the proceedings in the Supreme Court. R.S.O. 1970, c. 271, s. 3.

4.—(1) Subject to the *Mental Health Act*, the court has all the powers, jurisdiction and authority of Her Majesty over and in relation to the persons and estates of mentally incompetent persons, including the care and the commitment of the custody of mentally incompetent persons and of their persons and estates.

(2) The court may make orders for the custody of mentally incompetent persons and the management of their estates, and every such order takes effect, as to the custody of the person, immediately and, as to the custody of the estate, upon the completion of the committee's security. R.S.O. 1970, c. 271, s. 4.

5. The powers conferred by this Act upon the court may be exercised by a judge thereof in chambers. R.S.O. 1970, c. 271, s. 5.

6. Where proceedings under this Act are in the Supreme Court, it may delegate to a master, official referee or other officer any or all of its powers under this Act except the making of a declaration of mental incompetency, the confirmation of the appointment of a committee or the confirmation of a scheme of management. R.S.O. 1970, c. 271, s. 6.

DECLARATION OF MENTAL INCOMPETENCY

7.—(1) The court upon application supported by evidence may by order declare a person a mentally incompetent person if the court is satisfied that the evidence establishes beyond reasonable doubt that he is a mentally incompetent person. R.S.O. 1970, c. 271, s. 7 (1).

(2) The application may be made by the Attorney General, by any one or more of the next of kin of the alleged mentally incompetent person, by his or her wife or husband, by a creditor, or by any other person. R.S.O. 1970, c. 271, s. 7 (2); 1972, c. 1, s. 9 (7).

Appeal

(3) The alleged mentally incompetent person and any person aggrieved or affected by the order has the right to appeal therefrom.

Procedure

(4) The practice and procedure on the appeal shall be the same as on an appeal from an order made by a judge of the court. R.S.O. 1970, c. 271, s. 7 (3, 4).

Issue to try the alleged mental incompetency

8.—(1) Where in the opinion of the court the evidence does not establish beyond reasonable doubt the alleged mental incompetency, or where for any other reason the court considers it expedient so to do, instead of making an order under subsection 7 (1), the court may direct an issue to try the alleged mental incompetency.

Method of trial

(2) Subject to section 9, the issue shall be tried with or without a jury as the court directing it or the judge presiding at the trial may order.

Time and place

(3) The trial shall take place at such time and place as the court may direct.

Production of mentally incompetent person

(4) On the trial of the issue the alleged mentally incompetent person, if within the jurisdiction of the court, shall be produced, and shall be examined at such time and in such manner, either in open court or privately, and, where the trial is with a jury, before the jury retire to consider their verdict, as the presiding judge may direct, unless the court by the order directing the issue or the judge presiding at the trial dispenses with the production of the mentally incompetent person or with his examination.

Scope of inquiry

(5) On the trial of the issue the inquiry shall be confined to the question whether or not the person who is the subject of the inquiry is at the time of the inquiry a mentally incompetent person and incapable of managing himself or his affairs, and the presiding judge shall make an order in accordance with the result of the inquiry.

(6) The practice and procedure as to the preparation, entry for trial and trial of the issue, and all the proceedings incidental thereto, shall be the same as in the case of any other issue directed by the court or a judge.

Appeal

(7) The alleged mentally incompetent person and any person aggrieved or affected thereby have the like right to move against a verdict or to appeal from an order made upon or after the trial as may be exercised by a party to an action in the court including the right of appeal, and the court hearing any such motion or appeal has the same powers as upon a motion against a verdict or an appeal from a judgment entered at or after the trial of an action.

(8) Subject to section 11, the order or judgment of the court or, where the issue is tried by a jury, the verdict of the jury is final unless set aside upon appeal or motion under subsection (7). R.S.O. 1970, c. 271, s. 8.

9. An alleged mentally incompetent person is entitled to demand, by notice in writing to be given to the person applying for the declaration of his mental incompetency and also to be filed in the office of the clerk of the county or district court in which the proceedings have been brought, at least ten days before the first day of the sittings at which the issue is directed to be tried, that any issue directed to determine the question of his mental incompetency shall be tried with a jury, and, unless he withdraws the demand before the trial, or the court is satisfied by personal examination of the mentally incompetent person that he is not mentally competent to form and express a wish for a trial by jury and so declares by order, the issue shall be tried by a jury. R.S.O. 1970, c. 271, s. 9.

10.—(1) For the purposes of the examination mentioned in section 9, or where it is considered proper for any other purpose, the court may require the alleged mentally incompetent person to attend at such convenient time and place as the court appoints.

(2) The court may by order require an alleged mentally incompetent person to attend and submit to examination by one or more medical practitioners at such time and place as the order directs. R.S.O. 1970, c. 271, s. 10.

SUPERSEDING DECLARATION OF MENTAL INCOMPETENCY

11.—(1) Upon application at any time after the expiration of one year from the date of the order by which a person has been declared a mentally incompetent person, or sooner by leave of the court, the court, if satisfied that the person has become mentally competent and capable of managing his own affairs, may make an order so declaring.

(2) Any such order is subject to appeal as provided by subsections 7 (3) and (4).

(3) Instead of making an order under subsection (1), the court may direct an issue to try the question of the recovery of the person so formerly declared or adjudged a mentally incompetent person.

(4) Any issue so directed is subject to sections 8 and 9.

Order
superseding
declaration
of mental
incom-
petency

(5) Where a person formerly declared a mentally incompetent person has been found to be mentally competent and capable of managing his own affairs and the time for appealing from or moving against the order or verdict has expired, or if an appeal is taken or a motion made, when the same has been finally dismissed, an order may be issued superseding, vacating, and setting aside the order declaring the mental incompetency of the person for all purposes except as to acts or things done in respect of the person or estate of the mentally incompetent person while the order was in force. R.S.O. 1970, c. 271, s. 11.

COMMITTEES OF ESTATES OR MENTALLY INCOMPETENT PERSONS

Supple-
mental
powers of
court

12.—(1) Where an order has been made declaring a person a mentally incompetent person under section 7 or incapable of managing his affairs under section 39, the court, in the same or a subsequent order, shall,

- (a) appoint a committee of the person or of the estate of the person, or both;
- (b) propound a scheme for the management of the estate of the person; and
- (c) fix a time for the passing of the accounts of the committee,

but no order, in so far as it appoints a permanent committee or propounds a scheme of management, is effective until confirmed by the Supreme Court in the manner prescribed by the rules of court.

Order to
be filed
in S.C.O.

(2) The appointment of the committee and the scheme of management shall be filed in the office of the local registrar of the Supreme Court and shall be forthwith transmitted by him to the Registrar of the Supreme Court for confirmation as required by subsection (1).

Interim
committee

(3) The court may appoint a committee to act with such powers as it may confer upon him until a scheme of management is propounded and a permanent committee appointed, and any such appointment need not be confirmed. R.S.O. 1970, c. 271, s. 12.

Duties

13. Where a committee of the estate of a mentally incompetent person has been appointed,

- (a) the committee shall, within six months after being appointed, file in the office of the clerk of the court

in which the appointment was made a true inventory of the whole real and personal estate of the mentally incompetent person, stating the income and profits thereof, and setting forth the debts, credits, and effects of the mentally incompetent person, so far as they have come to the knowledge of the committee;

- (b) if any property belonging to the estate is discovered after the filing of the inventory, the committee shall file a true account of such property from time to time as it is discovered;
- (c) every inventory and account shall be verified by the oath of the committee;
- (d) the committee shall give security for the due performance of his duties in such amount as the court may direct, which security shall be in the form of a bond in the name of the clerk of the court and shall be filed in his office; and
- (e) the committee shall pass his accounts from time to time at such intervals as the court may direct. R.S.O. 1970, c. 271, s. 13.

MANAGEMENT AND ADMINISTRATION

14. The powers conferred by this Act as to the management and administration of a mentally incompetent person's estate are exercisable in the discretion of the court for the maintenance or benefit of the mentally incompetent person or of his family or, where it appears to be expedient, in the due course of management of the property of the mentally incompetent person. R.S.O. 1970, c. 271, s. 14.

Powers of court as to maintenance of mentally incompetent person or his family

15. Nothing in this Act subjects a mentally incompetent person's property to claims of his creditors further than it is now subject thereto by due course of law. R.S.O. 1970, c. 271, s. 15.

Rights of creditors

16.—(1) The court may order that any property of the mentally incompetent person, whether present or future, be sold, charged, mortgaged, dealt with or disposed of as is considered most expedient for the purpose of raising or securing or repaying, with or without interest, money that is to be or has been applied to,

Power to raise money for certain purposes

- (a) payment of the mentally incompetent person's debts or engagements;

- (b) discharge of any encumbrance on his property ;
- (c) payment of any debt or expenditure incurred for his maintenance or otherwise for his benefit ;
- (d) payment of or provision for the expenses of his future maintenance.

Terms of
charge or
mortgage

(2) Where a charge or mortgage is made under this Act for the expenses of future maintenance, the court may direct the same to be payable either contingently if the interest charged is contingent or future, or upon the happening of the event if the interest is dependent on an event that must happen, and either in a gross sum or in annual or other periodical sums, and at such times and in such manner as are considered expedient. R.S.O. 1970, c. 271, s. 16.

Charging
mentally
incompetent
person's
estate for
permanent
improve-
ments

17.—(1) The court may order that the whole or a part of any moneys expended or to be expended under an order of the court for the permanent improvement, security, or advantage of the property of the mentally incompetent person, or of a part thereof, shall, with interest, be a charge upon the improved property or any other property of the mentally incompetent person, but so that no right of sale or foreclosure during the lifetime of the mentally incompetent person is conferred by the charge.

Interest,
how to
be met

(2) The interest shall be kept down during the mentally incompetent person's lifetime out of the income of his general estate, as far as his general estate is sufficient to bear it.

To whom
charge to
be made

(3) The charge may be made either to a person advancing the money or, if the money is paid out of the mentally incompetent person's general estate, to a person as trustee for him as part of his personal estate. R.S.O. 1970, c. 271, s. 17.

Powers of
committee
under order
of court

18. The court may by order authorize and direct the committee of the estate of a mentally incompetent person to do all or any of the following things :

- (a) sell any property belonging to the mentally incompetent person ;
- (b) make exchange or partition of any property belonging to the mentally incompetent person, or in which he is interested, and give or receive any money for equality of exchange or partition ;
- (c) carry on any trade or business of the mentally incompetent person ;

- (d) grant leases of any property of the mentally incompetent person for building, agricultural, or other purposes;
- (e) grant leases of minerals forming part of the mentally incompetent person's property, whether the minerals have been worked or not, and either with or without the surface or other land;
- (f) surrender any lease and accept a new lease;
- (g) accept a surrender of any lease and grant a new lease;
- (h) execute any power of leasing vested in a mentally incompetent person having a limited estate only in the property over which the power extends;
- (i) perform any contract relating to the property of the mentally incompetent person entered into by him before his mental incompetency;
- (j) surrender, assign, or otherwise dispose of with or without consideration any onerous property belonging to the mentally incompetent person;
- (k) exercise any power or give any consent required for the exercise of any power where the power is vested in the mentally incompetent person for his own benefit or the power of consent is in the nature of a beneficial interest in the mentally incompetent person;
- (l) give consent to the transfer or assignment of a lease where the consent of the mentally incompetent person to the transfer or assignment thereof is requisite;
- (m) invest or reinvest any money in his hands belonging to the mentally incompetent person in the classes of securities in which a trustee may invest trust money under the *Trustee Act*. R.S.O. 1970, R.S.O. 1980, c. 512, s. 18.

19. Any property taken in exchange and any renewed lease accepted on behalf of a mentally incompetent person under this Act shall be to the same uses and be subject to the same trusts, charges, encumbrances, dispositions, devices, and conditions as the property given in exchange or the surrendered lease was or would, but for the exchange or surrender, have been subject to. R.S.O. 1970, c. 271, s. 19.

Property
exchanged
and renewed
lease to be
to same uses
as before

Extent
of leasing
power

20.—(1) The power to authorize leases of a mentally incompetent person's property under this Act extends to property of which the mentally incompetent person is tenant in tail, and every lease granted pursuant to any order under this Act binds the issue of the mentally incompetent person and all persons entitled in remainder and reversion expectant upon the estate tail of the mentally incompetent person, including the Crown, and every person to whom from time to time the reversion expectant upon the lease belongs upon the death of the mentally incompetent person has the same rights and remedies against the lessee, his executors, administrators and assigns as the mentally incompetent person or his committee would have had.

Term

(2) Leases authorized to be granted or accepted by or on behalf of a mentally incompetent person under this Act may be for such number of lives or such term of years, at such rent and royalties, and subject to such reservations, covenants, and conditions as the court may approve.

Premiums,
etc., on
renewal

(3) Premiums or other payments on the renewal of leases may be paid out of the mentally incompetent person's estate, or charged with interest on the leasehold property. R.S.O. 1970, c. 271, s. 20.

Nature of
proceeds of
sale and
mortgage

21.—(1) The mentally incompetent person, his heirs, executors, administrators, next of kin, devisees, legatees and assigns have the same interest in any money arising from any sale, mortgage or other disposition, under the powers of this Act, which may not have been applied under such powers, as he or they would have had in the property the subject of the sale, mortgage or disposition, if no sale, mortgage or disposition had been made, and the surplus money shall be of the same nature as the property sold, mortgaged or disposed of.

and of
money re-
ceived from
certain other
sources

(2) Money received for equality of partition and exchange, or under any lease of unopened mines, and all premiums and sums of money received upon the grant or renewal of a lease, where the property the subject of the partition, exchange or lease was land of the mentally incompetent person, shall, subject to the application thereof for any purposes authorized by this Act, as between the representatives of the real and personal estate of the mentally incompetent person, be considered as real estate, except in the case of premiums and sums of money received upon the grant or renewal of leases of property of which the mentally incompetent person was tenant for life, in which case the premiums and sums of money are personal estate of the mentally incompetent person.

(3) In order to give effect to this section, the court may ^{Powers of court} direct any money to be carried to a separate account, and may order such assurances and things to be executed and done as are considered expedient. R.S.O. 1970, c. 271, s. 21.

22. The committee of the estate, or such person as the ^{Power to carry orders into effect} court may approve, shall, in the name and on behalf of the mentally incompetent person, execute and do all such assurances and things for giving effect to any order under this Act as the court may direct, and every such assurance and thing is valid and effectual and takes effect accordingly, subject only to any prior charge to which the property affected thereby at the date of the order is subject. R.S.O. 1970, c. 271, s. 22.

23. Where a power is vested in a mentally incompetent ^{Powers vested in mentally incompetent person as trustee or guardian} person in the character of trustee or guardian, or the consent of a mentally incompetent person to the exercise of a power is necessary in the like character, or as a check upon the undue exercise of the power, and it appears to the Supreme Court to be expedient that the power should be exercised or the consent given, the committee of the estate, in the name and on behalf of the mentally incompetent person, under an order of the Supreme Court made upon the application of any person interested, may exercise the power or give the consent in such manner as the order may direct. R.S.O. 1970, c. 271, s. 23.

24. Where the Supreme Court exercises, in the name and ^{Appointment of trustees by S.C.O.} on behalf of a mentally incompetent person, a power of appointing new trustees vested in the mentally incompetent person, the Supreme Court, where it seems to be for the mentally incompetent person's benefit and also expedient, may make any order respecting the property subject to the trust that might have been made in the same case under the *Trustee Act* on the appointment thereunder of a new trustee ^{R.S.O. 1980, c. 512} or new trustees. R.S.O. 1970, c. 271, s. 24.

25.—(1) Where it appears to the court that there is reason ^{Provision for maintenance when disability is temporary} to believe that the mental incompetency of a mentally incompetent person so found is in its nature temporary, and will probably be soon removed, and that it is expedient that temporary provision be made for the maintenance of the mentally incompetent person, or of the mentally incompetent person and the members of his immediate family who are dependent upon him for maintenance, and that any sum of money arising from or being in the nature of income or of ready money belonging to him and standing to his account with a banker or agent, or being in the hands of any person for his use, is readily available, and may be safely and

properly applied in that behalf, the court may allow there-out such amount as is considered proper for the temporary maintenance of the mentally incompetent person or of the mentally incompetent person and the members of his immediate family who are dependent upon him for maintenance, and may, instead of proceeding to order a grant of the custody of the estate, order or give liberty for the payment of any such sum of money, or any part thereof, to such person as in the circumstances of the case it is thought proper to entrust with the application thereof, and may direct it to be paid to such person accordingly, and when received to be applied and it shall accordingly be applied in or towards such temporary maintenance.

Effect of
receipt

(2) The receipt in writing of the person to whom payment is to be made for any money payable to him by virtue of an order under this section is a good discharge, and every person shall act upon and obey every such order.

Liability to
account

(3) The person receiving any money by virtue of an order under this section shall pass an account thereof when and as the court may direct. R.S.O. 1970, c. 271, s. 25.

VESTING ORDERS

Power to
transfer
stock

26. Where any stock is standing in the name of or is vested in a mentally incompetent person beneficially entitled thereto, or is standing in the name of or vested in the committee of the estate of a mentally incompetent person so found in trust for the mentally incompetent person or as part of his property, and the committee dies intestate, or himself becomes a mentally incompetent person, or is out of Ontario, or it is uncertain whether the committee is living or dead, or he neglects or refuses to transfer the stock, or to receive or pay over the dividends thereof as directed by an order of the Supreme Court, then the Supreme Court may order some fit person to transfer the stock to or into the name of a new committee, or of the Accountant of the Supreme Court, or otherwise, and also to receive and pay over the dividends in such manner as it may direct. R.S.O. 1970, c. 271, s. 26.

Stock in
name of
mentally
incompetent
person out of
jurisdiction

27. Where any stock is standing in the name of or vested in a person residing out of Ontario, the Supreme Court, upon proof that he has been declared a mentally incompetent person and that his personal estate has been vested in a person appointed for the management thereof according to the law of the place where he is residing, may order some fit person to make such transfer of the stock or any part

thereof to or into the name of the person so appointed, or otherwise, and also to receive and pay over the dividends thereof as it may direct. R.S.O. 1970, c. 271, s. 27.

28.—(1) Where a mentally incompetent person is solely or jointly seised or possessed of any land upon trust or by way of mortgage, the Supreme Court may by order vest the land in such person or persons for such estate and in such manner as it may direct. Power to vest land of mentally incompetent trustee or mortgagee

(2) Where a mentally incompetent person is solely or jointly entitled to a contingent right in any land upon trust or by way of mortgage, the Supreme Court may by order release the land from the contingent right and dispose of it to such person as it may direct. Or a contingent right

(3) An order made under subsection (1) or (2) has the same effect as if the trustee or mortgagee had been sane and had executed a deed conveying the land for the estate named in the order, or releasing or disposing of the contingent right. Effect of order

(4) Where an order may be made under this section, the court may, if it is more convenient, appoint a person to convey the land or release the contingent interest, and a conveyance or release by such person in conformity with the order has the same effect as an order under subsection (1) or (2). R.S.O. 1970, c. 271, s. 28. Conveyance

29.—(1) Where a mentally incompetent person is solely entitled to any stock or chose in action upon trust or by way of mortgage, the Supreme Court may by order vest in any person the right to transfer or to call for a transfer of the stock or to receive the dividends thereof, or vest in any person the chose in action, or any interest in respect thereof. Mentally incompetent trustee or mortgagee of chose in action

(2) Where a person is jointly entitled with a mentally incompetent person to any stock or chose in action upon trust or by way of mortgage, the Supreme Court may make an order vesting the right to transfer or to call for a transfer of the stock or to receive the dividends thereof or vesting the chose in action or any interest in respect thereof either in such person alone or jointly with any other person. Jointly interested

(3) Where any stock is standing in the name of a deceased person whose personal representative is a mentally incompetent person or where a chose in action is vested in a mentally incompetent person as the personal representative of a deceased person, the Supreme Court may make an order vesting the right to transfer or to call for a transfer of the Mentally incompetent personal representative

stock or to receive the dividends thereof or vesting the chose in action or any interest in respect thereof in any person whom it may appoint.

Transfer

(4) Where an order may be made under this section, the court may, if it is more convenient, appoint some fit person to make or join in making the transfer. R.S.O. 1970, c. 271, s. 29.

Execution of powers of attorney and transfers

30.—(1) The person in whom the right to transfer or to call for a transfer of any stock is vested may execute and do all powers of attorney, assurances and things to complete the transfer according to the order, and the transfer is valid and effectual to all intents and purposes, and banks and other companies and their officers and all other persons are bound to obey every such order according to its terms.

Bank or company to be bound by order

(2) After notice in writing of an order under this Act, it is not lawful for a bank or other company to transfer stock to which the order relates or pay any dividends except in accordance with the order. R.S.O. 1970, c. 271, s. 30.

Order to be complete discharge

31. This Act and every order purporting to be made under this Act is a full indemnity and discharge to any bank and other company and society and their respective officers and servants and all other persons for all acts and things done or permitted to be done pursuant thereto so far as relates to any property in which a mentally incompetent person is interested either in his own right or as trustee or mortgagee, and it is not necessary to inquire into the propriety of any order purporting to be made under this Act relating to any such property or the jurisdiction to make such order. R.S.O. 1970, c. 271, c. 31.

Order to be conclusive evidence of mental incompetency

32. The fact that an order made under this Act for conveying or vesting land or releasing or disposing of a contingent right has been founded on an allegation of the mental incompetency of a trustee or mortgagee is conclusive evidence of the fact alleged in any court upon any question as to the validity of the order, but this section does not prevent the court from directing a reconveyance of any land or contingent right dealt with by the order, or from directing any party to any proceeding concerning such land or right to pay any costs occasioned by the order, where the order appears to have been improperly obtained. R.S.O. 1970, c. 271, s. 32.

Order vesting in trustees of charities

33. The powers conferred by this Act as to vesting orders may be exercised by vesting any land, stock or chose in action in the trustee or trustees of any charitable society or in any incorporated charitable body over which the court would

have jurisdiction upon action duly instituted, whether the appointment of such trustee or trustees was made by instrument under a power or by the court under its general or statutory jurisdiction. R.S.O. 1970, c. 271, s. 33.

34. The court may make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under this Act is to be exercised. ^{Declarations and directions by court} R.S.O. 1970, c. 271, s. 34.

35. Where the court has jurisdiction to order a conveyance or transfer of land or stock or to make a vesting order, an order may also be made appointing a new trustee or trustees. ^{Appointment of new trustee} R.S.O. 1970, c. 271, s. 35.

MISCELLANEOUS

36. Where there is money in any court to the credit of a person who has been found or who is alleged to be a mentally incompetent person and the person is resident in Great Britain or Ireland or in any part of Canada other than Ontario, upon production of an order made by a court having jurisdiction where the person is resident authorizing any person to receive such money, the court may make an order for payment of such money to the person designated in the order to receive it. ^{Money in court} R.S.O. 1970, c. 271, s. 36.

37. The court may order the costs, charges, and expenses of and incidental to orders, issues, directions, conveyances, transfers, and all proceedings of whatever nature under this Act to be paid by any party to the application, issue or proceeding, or out of the estate of the mentally incompetent person or alleged mentally incompetent person, or partly in one way and partly in another. ^{Costs} R.S.O. 1970, c. 271, s. 37.

38. Subject to the approval of the Lieutenant Governor in Council, the Rules Committee may make rules for carrying this Act into effect and for regulating the costs in relation thereto, and except where inconsistent with this Act or such rules, the *Judicature Act* and the rules made thereunder apply to proceedings under this Act. ^{Rules} R.S.O. 1980, c. 223, s. 38.

APPLICATION OF ACT TO PERSONS NOT MENTALLY INCOMPETENT, BUT INCAPACITATED BY MENTAL INFIRMITY

39.—(1) The provisions of this Act relating to management and administration apply to every person not declared to be mentally incompetent with regard to whom it is proved, ^{Extension of Act}

to the satisfaction of the court, that he is, through mental infirmity, arising from disease, age or other cause, or by reason of habitual drunkenness or the use of drugs, incapable of managing his affairs.

Application
of section

(2) This section applies although the person is not a mentally incompetent person.

Powers of
committee,
how
exercised
and by
whom

(3) Such of the powers of this Act as are made exercisable by the committee of the estate under order of the court shall be exercised in the cases provided for by subsection (1) by such person, in such manner, and with or without security, as the court may direct, and any such order may confer upon the person therein named authority to do any specified act or exercise any specified power, or may confer a general authority to exercise on behalf of the person to whom the order relates until further order, all or any such powers without further application to the court.

Liability
of person
appointed

(4) Every person appointed to do any such act or exercise any such power is subject to the jurisdiction and authority of the court as if such person were the committee of the estate of a mentally incompetent person so declared.

Application
of s. 14

(5) Section 14 applies to the cases provided for by subsection (1), and the person in respect of whom the order is made or any person aggrieved or affected by the order has the like right to appeal therefrom as is provided for by section 7.

Proceedings
on applica-
tion to
discharge
order

(6) Upon application at any time after the expiration of one year from the date of the order by which a person has been declared incapable of managing his affairs under subsection (1), or sooner by leave of the court, the like proceedings may be taken and the like order made as provided in section 11 in the case of a person who has been declared a mentally incompetent person. R.S.O. 1970, c. 271, s. 39.

CHAPTER 265

Mercantile Law Amendment Act

1. In this Act,

Interpre-
tation

- (a) "bill of lading" includes all receipts for goods accompanied by an undertaking to transfer them from the place where they were received to some other place by any mode of carriage whatever, whether by land or water or partly by land and partly by water;
- (b) "goods" includes wares and merchandise;
- (c) "warehouse receipt" means a receipt given by any person for any goods in his actual, visible and continued possession as bailee thereof in good faith and not as of his own property, and includes,
 - (i) a receipt given by any person who is the owner or keeper of a harbour, cove, pond, wharf, yard, warehouse, shed, storehouse or other place for the storage of goods delivered to him as bailee, and actually in the place or in one or more of the places owned or kept by him whether such person is engaged in other business or not,
 - (ii) a receipt given by any person in charge of logs or timber in transit from timber limits or other land to the place of destination of such logs or timber,
 - (iii) a specification of timber,
 - (iv) a warehouse receipt as defined by the *Warehouse Receipts Act*. R.S.O. 1970, c. 272, s. 1.

R.S.O. 1980,
c. 528

2.—(1) Every person who, being surety for the debt or duty of another or being liable with another for any debt or duty, pays the debt or performs the duty is entitled to have assigned to him, or to a trustee for him, every judgment, specialty or other security that is held by the creditor in respect of the debt or duty, whether the judgment, specialty or other security is or is not deemed at law to have been satisfied by the payment of the debt or the performance of the duty.

Right of
sureties
paying the
principal
debt, etc.,
to assign-
ment

Remedies
on such
assignment

(2) Such person is entitled to stand in the place of the creditor, and to use all the remedies and, on proper indemnity, to use the name of the creditor in any action or other proceeding in order to obtain from the principal debtor, or any co-surety, co-contractor or co-debtor, indemnification for the advances made and loss sustained by such person, and the payment or performance made by him is not a defence to such action or other proceeding by him.

What one
co-surety,
etc., may
recover from
another

(3) No co-surety, co-contractor or co-debtor is entitled to recover from any other co-surety, co-contractor or co-debtor more than the just proportion to which, as between themselves, the last-mentioned person is justly liable. R.S.O. 1970, c. 272, s. 2.

Securities
held on joint
account

3.—(1) Where, in a mortgage or an obligation for payment of money, or a transfer of mortgage or of such obligation, made after the 1st day of July, 1886, the sum or any part of the sum advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account, or where a mortgage, or such an obligation, or such a transfer, is made to more persons than one, jointly and not in shares, the mortgage money, or other money or money's worth, for the time being due to such persons on the mortgage or obligation shall be deemed to be and remain money or money's worth belonging to those persons on a joint account, as between them and the mortgagor or obligor, and the receipt in writing of the survivors or last survivor of them, or of the personal representative of the last survivor, is a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

Application
of section

(2) This section applies only if and as far as a contrary intention is not expressed in the mortgage or obligation or transfer, and has effect subject to the terms thereof. R.S.O. 1970, c. 272, s. 3.

Joint
contracts

4. In case any one or more joint contractors, obligors or partners die, the person interested in the contract, obligation or promise entered into by such joint contractors, obligors or partners may proceed by action against the representatives of the deceased contractor, obligor or partner in the same manner as if the contract, obligation or promise had been joint and several, and this notwithstanding there may be another person liable under such contract, obligation or promise still living, and an action pending against such person, but the property and effects of shareholders in chartered banks or the members of other incorporated companies are not liable

to a greater extent than they would have been if this section had not been passed. R.S.O. 1970, c. 272, s. 4.

5.—(1) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly to pay money or to make a conveyance, or to do any other act to them or for their benefit, shall be deemed to include and shall by virtue of this Act imply an obligation to do the act to or for the benefit of the survivor or survivors of them, and to or for the benefit of any other person to whom the right to sue on the covenant, contract, bond or obligation devolves.

Effect of covenant with two or more jointly

(2) This section extends to a covenant implied by the *Conveyancing and Law of Property Act*.

Idem
R.S.O. 1980,
c. 90

(3) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond or obligation, and has effect subject to the covenant, contract, bond or obligation and to the provisions therein contained. R.S.O. 1970, c. 272, s. 5.

Contrary intention

6.—(1) Any covenant, whether express or implied, or agreement entered into by a person with himself and one or more other persons shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been entered into with the other person or persons alone.

Covenants of a person and one or more persons enforceable

(2) This section applies to covenants or agreements heretofore or hereafter entered into and to covenants implied by statute in the case of a person who conveys or is expressed to convey to himself and one or more other persons, but without prejudice to any order of the court made before the 18th day of April, 1933. R.S.O. 1970, c. 272, s. 6.

Application of section

7.—(1) Every consignee of goods named in a bill of lading and every endorsee of a bill of lading to whom the property in the goods therein mentioned passes upon, or by reason of the consignment or endorsement, has and is vested with all rights of action, and is subject to the same liabilities in respect of the goods as if the contract contained in the bill of lading had been made with him.

Bills of lading

(2) Nothing in this section prejudices or affects any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee, by reason of or in consequence of his being the consignee or endorsee, or of his receipt of the goods by reason of or in consequence of the consignment or endorsement.

Certain rights and liabilities not affected

Bills of lading as evidence against signer

(3) Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board a vessel, train or conveyance of any kind is conclusive evidence of shipment as against the master or other person signing it, notwithstanding that the goods or some part thereof may not have been so shipped, unless the holder of the bill of lading has actual notice at the time of receiving it that the goods had not in fact been laden on board, or unless the bill of lading has a stipulation to the contrary, but the master or other person so signing may exonerate himself in respect to such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper or of the holder, or of some person under whom the holder claims. R.S.O. 1970, c. 272, s. 7.

Assignment of warehouse receipts, etc., as collateral security
R.S.O. 1980, c. 528

8.—(1) Subject to the provisions of the *Warehouse Receipts Act* as to the negotiation of, and the transfer of the goods covered by, a warehouse receipt as defined therein, the owner of or other person entitled to receive the goods included in a warehouse receipt or bill of lading may transfer the warehouse receipt or bill of lading by endorsement thereon signed by himself, his attorney or agent to any other person as collateral security for any debt owing by him.

What passes

(2) The endorsement or transfer vests in the transferee from the date thereof all the right or title of the transferor to or in the goods, subject to the right of the transferor to have the goods, warehouse receipt or bill of lading re-transferred to him if the debt is paid when due.

Rights of transferee

(3) If the debt is not paid when due, the person to whom the goods, warehouse receipt or bill of lading was so transferred may sell the goods and, after satisfying any lien against the goods, may retain the proceeds or so much thereof as is equal to the amount of the debt and shall return the surplus, if any, to the transferor. R.S.O. 1970, c. 272, s. 8.

Warehouse receipt or bill of lading given by owner who is warehouse-man

9. Where a person by whom a warehouse receipt or bill of lading might be given for goods in his capacity as a miller, or the owner or keeper of a harbour, cove, pond, wharf, yard, warehouse, shed, storehouse or other place for the storage of goods delivered to him as bailee, master of a vessel or carrier, is the owner of or entitled himself otherwise than in such capacity to receive the goods, any warehouse receipt or bill of lading, or any acknowledgment or certificate intended to answer the purpose thereof, given and endorsed by such person is as valid and effectual for the purposes of this Act as if the warehouse receipt, bill of lading, acknowledgment or certificate had been given by one person and endorsed by another. R.S.O. 1970, c. 272, s. 9

10. If goods are manufactured or produced from the goods or any of them included in or covered by any warehouse receipt, while so covered, the person holding the warehouse receipt shall hold or continue to hold the goods during the process and after the completion of the manufacture or production with the same right and title and for the same purposes and upon the same conditions as he held or could have held the original goods. R.S.O. 1970, c. 272, s. 10.

As to goods
manufac-
tured from
articles
pledged

11.—(1) No goods, other than timber, boards, deals, staves, sawlogs or other lumber, shall be held in pledge for any period exceeding six months.

Limit of
time for
holding
goods in
pledge

(2) No timber, boards, deals, staves, sawlogs or other lumber shall be held in pledge for any period exceeding twelve months.

Idem

(3) No transfer of a bill of lading or warehouse receipt shall be made under this Act to secure the payment of any debt unless the debt is contracted at the time of the acquisition of the bill of lading or warehouse receipt, or upon the written promise or agreement that the bill of lading or warehouse receipt would be given to such person. R.S.O. 1970, c. 272, s. 11.

When the
debt may
be incurred

12. All advances made on the security of a bill of lading or warehouse receipt give to the person making the advances a claim for the repayment of the advances on the goods therein mentioned, or into which they have been converted, prior to and by preference over the claim of any unpaid vendor or other creditor, save and except claims for wages for labour performed in making and transporting timber, boards, deals, staves, sawlogs or other lumber, but such preference is not given over the claim of an unpaid vendor who had a lien upon the goods at the time of the acquisition by such person of the bill of lading or warehouse receipt, unless the same was acquired by him without knowledge of such lien. R.S.O. 1970, c. 272, s. 12.

Prior claim
of person
making
advance over
unpaid
vendor

13.—(1) In the event of the non-payment at maturity of any debt or liability secured by a bill of lading or warehouse receipt, the holder thereof may sell the goods mentioned therein or so much thereof as will suffice to pay the debt or liability with interest and expenses, returning the surplus, if any, to the person from whom the bill of lading or warehouse receipt, or the goods mentioned therein, as the case may be, were acquired, but such power of sale shall be exercised subject to subsections (2), (3) and (4).

Sale of goods
on non-pay-
ment of debt

Notice of
sale of
timber, etc.

(2) No sale of any timber, boards, deals, staves, sawlogs or other lumber shall be made under this Act without the consent in writing of the owner until notice of the time and place of the sale has been given by registered letter to the last known address of the pledgor at least thirty days before the sale.

Notice of
sale of
other goods

(3) No goods, other than timber, boards, deals, staves, sawlogs or other lumber, shall be sold under this section without the consent of the owner until notice of the time and place of sale has been given by a registered letter to the last known address of the pledgor thereof at least ten days before the sale.

Sale by
auction

(4) Every sale under such power of sale without the consent of the owner shall be made by public auction after notice thereof by advertisement in at least two newspapers published in or nearest to the place where the sale is to be made, stating the time and place thereof. R.S.O. 1970, c. 272, s. 13.

Transfer of
warehouse
receipts for
crude petro-
leum issued
by incor-
porated
companies

14.—(1) Every transportation receipt, warehouse receipt, accepted order and certificate for crude petroleum, issued by an incorporated company authorized to carry on the business of warehousing, is transferable by endorsement, either special or in blank, and upon being endorsed in blank becomes transferable by delivery, and every such endorsement or transfer by delivery transfers all right of property and possession of the petroleum mentioned in the transportation or warehouse receipt, accepted order or certificate, to the endorsee or transferee thereof, subject to the terms and conditions of the transportation or warehouse receipt, accepted order or certificate as fully and completely as if a sale of the petroleum mentioned therein had been made in the ordinary way.

Idem

(2) On the delivery of any petroleum mentioned in such document by such company in good faith to a person in possession of the transportation or warehouse receipt, accepted order or certificate so endorsed or transferred, the company is freed from all further liability in respect thereof, and the endorsee or transferee or holder of the transportation or warehouse receipt, accepted order or certificate to whom the property in the petroleum mentioned therein passes by reason of such endorsement or delivery has transferred to and vested in him all rights of action and is subject to the same liabilities in respect of such petroleum as if the contract contained in the transportation or warehouse receipt, accepted order or certificate had been made by the company with himself. R.S.O. 1970, c. 272, s. 14.

Construction
of stipu-
lations not
of the
essence of
the contract
1881, c. 5

15. Stipulations in contracts as to time or otherwise that would not, before the coming into force of *The Ontario Judicature Act, 1881*, have been deemed to be or to have become

of the essence of such contracts in a court of equity shall receive in all courts the same construction and effect as they would prior to the coming into force of that Act have received in equity. R.S.O. 1970, c. 272, s. 15.

16. Part performance of an obligation either before or after a breach thereof when expressly accepted by the creditor in satisfaction or rendered in pursuance of an agreement for that purpose, though without any new consideration, shall be held to extinguish the obligation. R.S.O. 1970, c. 272, s. 16.

CHAPTER 266

Milk Act

INTERPRETATION

1. In this Act,

Interpre-
tation

1. "agreement" means an agreement made under this Act or the regulations;
2. "award" means an award made by the Commission or by an arbitrator or board of arbitration under the regulations;
3. "cheese factory" means premises in which milk is processed into cheese;
4. "Commission" means The Milk Commission of Ontario;
5. "concentrated milk plant" means a plant in which milk or cream is processed into a milk product other than butter or cheese or a fluid milk product;
6. "creamery" means premises in which milk or cream is processed into creamery butter;
7. "cream receiving station" means premises at which cream is received for the purpose of being transported to a creamery;
8. "dairy" means premises in which milk is processed into fluid milk products;
9. "Director" means the Director appointed under this Act;
10. "distributor" means a person engaged in selling or distributing fluid milk products directly or indirectly to consumers;
11. "field-man" means a field-man appointed for the purposes of this Act;
12. "fluid milk products" means the classes of milk and milk products processed from Grade A milk and designated as fluid milk products in the regulations;

13. "Grade A milk" means milk designated as Grade A milk in the regulations;
14. "industrial milk" means milk designated as industrial milk in the regulations;
15. "licence" means a licence provided for under this Act or the regulations;
16. "marketing" includes advertising, assembling, buying, distributing, financing, offering for sale, packing, processing, selling, shipping, storing and transporting and "market" and "marketed" have corresponding meanings;
17. "marketing board" means a board constituted under a plan;
18. "milk" means milk from cows or goats;
19. "milk product" means any product processed or derived in whole or in part from milk, and includes cream, butter, cheese, cottage cheese, condensed milk, milk powder, dry milk, ice cream, ice cream mix, casein, malted milk, sherbet and such other products that are designated as milk products in the regulations;
20. "milk receiving station" means premises at which milk is received for the purpose of being transported to a cheese factory, concentrated milk plant, creamery or dairy;
21. "Minister" means the Minister of Agriculture and Food;
22. "plan" means a plan that is in force under this Act to provide for the control and regulation of the marketing of milk, cream or cheese, or any combination thereof;
23. "plant" means a cheese factory, concentrated milk plant, cream receiving station, creamery, dairy or milk receiving station;
24. "processing" means heating, pasteurizing, evaporating, drying, churning, freezing, separating into component parts, combining with other substances by any process or otherwise treating milk or cream in the manufacture or preparation of milk products or fluid milk products;

25. "processor" means a person engaged in the processing of milk products or fluid milk products;
26. "producer" means a producer of milk, cream or cheese;
27. "reconstituted milk" means milk designated as reconstituted milk in the regulations;
28. "regulated product" means milk, cream or cheese, or any combination thereof, in respect of which a plan is in force;
29. "regulations" means the regulations made under this Act;
30. "transporter" means a person transporting milk or cream. R.S.O. 1970, c. 273, s. 1; 1972, c. 162, s. 1 (2); 1977, c. 64, s. 1; 1978, c. 100, s. 15 (1).

PURPOSE OF ACT

2. The purpose and intent of this Act is to provide for ^{Purpose of Act} the control and regulation in any or all respects of,

- (a) the marketing within Ontario of milk, cream or cheese, or any combination thereof, including the prohibition of such marketing in whole or in part; and
- (b) the quality of milk, milk products and fluid milk products within Ontario. R.S.O. 1970, c. 273, s. 2.

THE MILK COMMISSION OF ONTARIO

3.—(1) The Milk Commission of Ontario is continued as a ^{Milk Commission continued} body corporate responsible to the Minister.

(2) The Commission shall be composed of not fewer than ^{Composition} three members who shall be appointed by and hold office during the pleasure of the Lieutenant Governor in Council.

(3) The Lieutenant Governor in Council may designate ^{Chairman, vice-chairman} one of the members of the Commission as chairman and one as vice-chairman.

(4) A majority of the members of the Commission consti- ^{Quorum} tutes a quorum whether or not a vacancy exists in the membership.

- Vacancies (5) Vacancies in the membership of the Commission caused by death, resignation or otherwise may be filled by the Lieutenant Governor in Council.
- Remuneration and expenses (6) The members of the Commission shall receive such remuneration and expenses as the Lieutenant Governor in Council determines.
- Staff (7) The Lieutenant Governor in Council may appoint such officers, field-men and other employees as he considers necessary for the conduct of the affairs of the Commission.
- No personal liability (8) No member of the Commission and no officer, field-man or other employee of the Commission is personally liable for anything done by him in good faith under or purporting to be under the authority of this Act or the regulations. R.S.O. 1970, c. 273, s. 3.
- Duties and responsibilities of Commission 4.—(1) The duties and responsibilities of the Commission are,
- (a) to exercise such powers as are conferred upon it by or under this Act;
 - (b) to develop and formulate policies to stimulate and improve the marketing of milk and milk products;
 - (c) to select, develop and maintain research programs required for policy development and formulation;
 - (d) to inquire into the efficiency of such policies and the manner in which they are being implemented;
 - (e) to co-operate with the Canadian Dairy Commission or any other agency of Canada or of any province of Canada respecting the producing, processing and marketing of milk and milk products;
 - (f) to provide and maintain liaison with organizations representing producers, processors or transporters in Ontario; and
 - (g) to conduct such studies as the Minister directs respecting the producing, processing and marketing of milk or milk products, and report thereon to the Minister. 1972, c. 162, s. 2 (1).
- Idem (2) Without limiting the generality of subsection (1), the Commission may,
- (a) upon its own initiative or upon complaint, inquire into any matter relating to the production, processing or marketing of milk or milk products;

- (*b*) investigate, arbitrate, adjust or otherwise settle any dispute between persons engaged in producing, processing or marketing milk or milk products, or between any two classes of such persons;
- (*c*) investigate the cost of producing, processing and marketing any milk or milk product, prices, price spreads, trade practices, methods of financing, management policies and other matters relating to the producing, processing or marketing of milk and milk products;
- (*d*) require persons engaged in producing or marketing a regulated product to register their names, addresses and occupations with the Commission or marketing board;
- (*e*) require persons engaged in producing, processing or marketing a regulated product to furnish such information relating to the production, processing or marketing of the regulated product as the Commission or marketing board determines;
- (*f*) appoint persons to inspect the books, records, documents and premises of persons engaged in producing or marketing a regulated product;
- (*g*) stimulate, increase and improve the marketing of milk and milk products by such means as it considers proper;
- (*h*) co-operate with a marketing board or a marketing agency of Canada or of any province of Canada for the purpose of marketing any regulated product;
- (*i*) after a hearing, prohibit a person engaged in marketing a regulated product from terminating or varying, without just cause, the marketing of the regulated product;
- (*j*) authorize any officer or field-man to exercise such of its powers as it considers necessary and to report thereon to the Commission;
- (*k*) take such action and make such orders and issue such directions as are necessary to enforce the due observance and carrying out of the provisions of this Act, the regulations, any plan or any agreement or award. R.S.O. 1970, c. 273, s. 4 (2); 1972, c. 162, s. 2 (2).

Powers of
Commission

R.S.O. 1980,
c. 411

(3) The Commission, for the purposes of any inquiry, arbitration or investigation under subsection (2), has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry, arbitration or investigation as if it were an inquiry under that Act. 1972, c. 162, s. 2 (3).

Order for
payment of
moneys to
producers,
etc.

(4) The Commission may, upon any inquiry, investigation or arbitration under clause (2) (a) or (b), order the payment by any person engaged in producing, processing or marketing milk or milk products, to any other person engaged therein, of moneys, in an amount to be fixed by the Commission, that are payable to such other person by reason of a failure on the part of the person to whom the order is directed to fulfil any obligation imposed upon him by or under this Act or any regulation, plan, award or agreement or by any order or direction of the Commission or a marketing board. 1974, c. 18, s. 1.

Delegation
of powers

(5) The Commission may delegate to a marketing board such of its powers under subsection (2) as it considers necessary and may at any time terminate any such delegation.

Regulations
with respect
to filings,
annual
statements,
etc.

(6) The Commission may make regulations,

(a) providing for the filing with the Commission by each marketing board of true copies of,

(i) minutes of all meetings of the marketing board,

(ii) all by-laws of the marketing board,

(iii) all orders, directions and regulations of the marketing board,

(iv) all reports of annual operations of the marketing board,

(v) all annual financial statements and audited reports of the marketing board, and

(vi) such further information, statements and reports as the Commission requires from the marketing board;

(b) providing for,

(i) the furnishing to producers of a regulated product of copies of the annual statement of operations and the financial report of the marketing board, and

- (ii) the publication of the annual statement of operations and the financial report of each marketing board;
- (c) providing for the manner in which and fixing the times at which, or within which, copies of minutes, orders, directions, regulations, reports and statements shall be filed with the Commission, furnished to producers or published, as the case may be, under clause (a) or (b). R.S.O. 1970, c. 273, s. 4 (6, 7).

5. Every field-man may,

Powers of
field-men

- (a) enter any premises or conveyance used for the producing, processing or marketing of milk or milk products and inspect any equipment, milk or milk products found therein;
- (b) stop any conveyance that he believes may contain any milk or milk product and inspect the conveyance and any milk product found therein;
- (c) obtain a sample of any milk or milk product at the expense of the owner for the purpose of making an inspection thereof;
- (d) require the production or furnishing of copies of or extracts from any books, records or documents of persons engaged in the producing, processing or marketing of milk or milk products. R.S.O. 1970, c. 273, s. 5.

6.—(1) Where the Commission receives from a group of producers in Ontario or any part thereof a petition or request that a plan be established for the control and regulation of the marketing of milk, cream or cheese, or any combination thereof, and the Commission is of the opinion that the group of producers is representative of the producers affected by the proposed plan, the Commission may recommend the establishment of such a plan to the Minister.

(2) Where the Commission receives from a marketing board a request that amendment be made to the plan or to regulations under the plan under which the marketing board is constituted, the Commission may recommend such amendment to the Minister. R.S.O. 1970, c. 273, s. 6.

7.—(1) Notwithstanding section 6, the Lieutenant Governor in Council may make regulations,

Regulations
with respect
to plans and
marketing
boards

- (a) establishing, amending and revoking plans for control and regulation of the marketing within Ontario

or any part thereof of milk, cream or cheese, or any combination thereof, and constituting marketing boards to administer such plans;

- (b) defining any word or words for the purposes of any plan;
- (c) giving to any marketing board any or all of the powers that are vested in a co-operative corporation incorporated under the *Co-operative Corporations Act*, as amended or re-enacted from time to time, and providing that in the exercise of such powers the members of the marketing board shall be deemed to be the shareholders and the directors thereof;
- (d) prescribing by-laws for regulating the conduct of the affairs of the Commission;
- (e) prescribing by-laws for regulating the government of marketing boards and the conduct of their affairs, but any marketing board may make by-laws not inconsistent with this Act, with regulations made under this clause or with regulations made under the plan under which the marketing board is constituted, as amended from time to time;
- (f) notwithstanding any other Act, providing for,
 - (i) the carrying out by the Commission or a trustee of any or all of the powers of a marketing board,
 - (ii) the vesting of the assets of a marketing board in the Commission or a trustee, and
 - (iii) the disposing of any or all of the assets of a marketing board in such manner as is prescribed,

and, where any regulation made under this clause is in conflict with any by-law of the marketing board, the regulation prevails;

- (g) dissolving a marketing board on such terms and conditions as he considers proper and providing for the disposition of its assets. R.S.O. 1970, c. 273, s. 7 (1); 1973, c. 104, s. 1 (2).

(2) A plan may apply to,

Application
of plans

- (a) all of Ontario or to any area within Ontario;
- (b) milk, cream or cheese, or any combination thereof;
and
- (c) any or all persons engaged in producing, processing
or marketing the product or products under clause
(b) to which the plan applies.

(3) The method by which the members of any marketing board shall be appointed, elected or chosen and the application of the plan shall be set out in the plan under which the marketing board is constituted.

Method of
choosing, etc.,
members of
marketing
boards

(4) Every marketing board is a body corporate.

Marketing
boards are
bodies
corporate

(5) The acts of a member or an officer of a marketing board are valid notwithstanding any defects that may afterwards be discovered in his qualifications and his appointment, election or choosing.

Acts of
members
valid

(6) No member of a marketing board or any of its officers or employees is personally liable for anything done by it or by him in good faith under or purporting to be under the authority of this Act or the regulations. R.S.O. 1970, c. 273, s. 7 (2-6).

No
personal
liability

8.—(1) The Commission may make regulations with respect to regulated products generally or to any regulated product, and, without limiting the generality of the foregoing, may make regulations,

Regulations
with respect
to regulated
products

1. providing for the licensing of any or all persons before commencing or continuing to engage in the producing, processing or marketing of a regulated product;
2. prohibiting persons from engaging in the producing, processing or marketing of any regulated product, except under the authority of a licence;
3. providing for the refusal to issue a licence to commence to engage in the producing, processing or marketing of a regulated product where the applicant is not qualified by experience, financial responsibility or equipment to properly engage in the business for which the application was made, or for any other reason that the Commission considers proper;

4. providing for the suspension or revocation of, or the refusal to issue or renew, a licence to continue to engage in the producing, processing or marketing of a regulated product, for failure to observe, perform or carry out the provisions of this Act, the regulations, any plan or any order or direction of the Commission or marketing board;
5. providing for the fixing of licence fees payable yearly, half-yearly, quarterly or monthly at different amounts or in instalments from any or all persons producing or marketing a regulated product, and the collecting of the licence fees and the recovering of such licence fees by suit in any court of competent jurisdiction;
6. requiring any person who receives a regulated product from a producer to deduct from the moneys payable to the producer any licence fees payable by the producer to the marketing board and to pay such licence fees to the marketing board;
7. requiring any person who produces and processes a regulated product to furnish to the Commission or to the marketing board statements of the amounts of the regulated product that he produced in any year and used for processing;
8. prescribing the form of licences;
9. providing for the exemption from any or all of the regulations under any plan of any class, variety, grade or size of regulated product or of any person or class of persons engaged in the producing or marketing of the regulated product or any class, variety, grade or size of regulated product;
10. requiring the furnishing of security or proof of financial responsibility by any person engaged in the marketing of a regulated product, and providing for the administration, forfeiture and disposition of any moneys or securities so furnished;
11. authorizing a marketing board,
 - i. to require that a regulated product be marketed on a quota basis,
 - ii. to prohibit any person to whom a quota has not been fixed and allotted for the marketing of a regulated product or whose quota has

been cancelled from marketing any of the regulated product, and

- iii. to prohibit any person to whom a quota has been fixed and allotted for the marketing of a regulated product from marketing any of the regulated product in excess of such quota;

12. authorizing a marketing board,

- i. to fix and allot to persons quotas for the marketing of a regulated product on such basis as the marketing board considers proper,
- ii. to refuse to fix and allot to any person a quota for the marketing of a regulated product for any reason that the marketing board considers proper,
- iii. to cancel or reduce, or refuse to increase, a quota fixed and allotted to any person for the marketing of a regulated product for any reason that the marketing board considers proper, and
- iv. to permit any person to whom a quota has been fixed and allotted for the marketing of a regulated product to market any of the regulated product in excess of such quota on such terms and conditions as the marketing board considers proper;

- 13. providing for the control and regulation of the marketing of any regulated product, including the times and places at which the regulated product may be marketed;
- 14. determining the quantity of each class, variety, grade or size of the regulated product that shall be marketed by each producer;
- 15. providing for the control and regulation of agreements entered into by producers of a regulated product with persons engaged in marketing or processing the regulated product, and the prohibition of any provision or clause in such agreements;
- 16. authorizing a marketing board to determine from time to time the price or prices that shall be paid for the regulated product or any class, variety, grade or size of the regulated product, and to determine different prices for different parts of Ontario;

17. providing for the fixing, imposing and collecting of service charges from time to time for the marketing of the regulated product;
18. authorizing a marketing board to pay from service charges imposed under paragraph 17 its expenses in carrying out the purposes of the plan;
19. authorizing a marketing board to use any class of licence fees and other moneys payable to it for the purposes of paying the expenses of the marketing board, carrying out and enforcing this Act and the regulations and carrying out the purposes of the plan under which the marketing board is constituted;
20. authorizing a marketing board to establish a fund in connection with the plan for the payment of any moneys that may be required for the purposes mentioned in paragraph 19;
21. notwithstanding any other Act, providing that no marketing board shall make grants or other like payments of money to any person or association or body of persons without the approval of the Commission;
22. providing for the establishment, in connection with any plan, of advisory committees that may be empowered to advise and make recommendations to the Commission or to a marketing board or to any person or organization represented on the committee in respect of,
 - i. the promotion of harmonious relationships between persons engaged in the producing and marketing of the regulated product,
 - ii. the promotion of greater efficiency in the producing and marketing of the regulated product,
 - iii. the prevention and correction of irregularities and inequities in the marketing of the regulated product,
 - iv. the improvement of the quality and variety of the regulated product,
 - v. the improvement of the circulation of market information respecting the regulated product,

- vi. without limiting the generality of any of the foregoing, any matter with respect to which the Commission or the marketing board may be empowered to make regulations under this Act;
- 23. determining the constitution of such advisory committees, and regulating the practice and procedure of such committees;
 - 24. providing for the establishment, in connection with any plan, of negotiating agencies that may be empowered to adopt or settle by agreement,
 - i. the minimum prices for the regulated product or for any class, variety, grade or size of the regulated product,
 - ii. the terms, conditions and forms of agreements relating to the producing or marketing of the regulated product,
 - iii. any charges, costs or expenses relating to the producing or marketing of the regulated product;
 - 25. providing for the establishment, in connection with any plan, of a conciliation board that may be empowered,
 - i. to endeavour to effect agreement on any matter referred to in paragraph 24 that a negotiating agency has failed to adopt or settle by agreement, and
 - ii. to recommend adoption of any agreement effected under subparagraph i to such negotiating agency;
 - 26. providing for the arbitration by the Commission or by a board of arbitration of any matter not adopted or settled by agreement under paragraph 24;
 - 27. providing for the arbitration by the Commission or by an arbitrator or by a board of arbitration of any dispute arising out of any agreement adopted or settled under paragraph 24 or any award made under paragraph 26;

28. determining the constitution of such negotiating agencies, conciliation boards and boards of arbitration, providing for the appointment of arbitrators, and regulating the practice and procedure of such agencies, boards and arbitrators;
29. requiring that no charges, costs or expenses relating to the producing or marketing of a regulated product shall be made, other than such charges, costs or expenses as are provided for in the agreement or award or renegotiated agreement or award in force for the marketing of the regulated product;
30. prescribing the form of agreements filed with the Commission;
31. providing that the regulated product shall be marketed by, from or through the marketing board, and prohibiting any person from marketing any of the regulated product except by, from or through the marketing board;
32. authorizing any marketing board to prohibit the marketing of any class, variety, grade or size of any regulated product;
33. requiring any person who produces a regulated product to offer to sell and to sell the regulated product to or through the marketing board constituted to administer the plan under which the regulated product is regulated;
34. prohibiting any person from processing, packing or packaging any of the regulated product that has not been sold to, by or through the marketing board constituted to administer the plan established for the control and regulation of the marketing of the regulated product;
35. authorizing any marketing board to require the price or prices of the regulated product to be paid to or through the marketing board, and to recover such price or prices by suit in a court of competent jurisdiction;
36. authorizing a marketing board to purchase or otherwise acquire such quantity or quantities of the regulated product as the marketing board considers advisable and to sell or otherwise dispose of such quantity or quantities of the regulated product so purchased or otherwise acquired;

37. authorizing any marketing board to conduct a pool or pools for the distribution of all moneys received from the sale of the regulated product, and requiring such marketing board, after deducting all necessary and proper disbursements and expenses, to distribute the remainder of the moneys received from the sale in such manner that every producer receives a share of the remainder of the moneys received from the sale in relation to the amount, class, variety, grade and size of the regulated product delivered by him, and authorizing such marketing board to make an initial payment on delivery of the regulated product and subsequent payments until all the remainder of the moneys received from the sale is distributed to the producers;
38. providing for statements to be given by any marketing board to producers showing the class, variety, grade or size and the quantity of the regulated product marketed, the price or prices paid and the particulars of the service charges imposed by the marketing board;
39. providing for the carrying out of any plan declared by the Lieutenant Governor in Council to be in force;
40. providing for the holding of a plebiscite of producers upon a question of favour of a plan or amendment of a plan or any matter respecting the marketing of a regulated product;
41. providing for the holding of public hearings on matters respecting the operation of any plan or the holding of a plebiscite of producers;
42. authorizing any marketing board to appoint agents, to prescribe their duties and terms and conditions of employment, and to fix their remuneration and provide for the payment thereof;
43. providing for the making of agreements relating to the marketing of any regulated product by or through a marketing board, and prescribing the forms and the terms and conditions of such agreements;
44. providing for the making of such orders and the issuing of such directions as are necessary to enforce the due observance and carrying out of the provisions of this Act, the regulations, any plan or any order or direction of

the Commission or of a marketing board. R.S.O. 1970, c. 273, s. 8 (1); 1972, c. 155, s. 1 (1); 1972, c. 162, s. 3.

Agreements
and awards

(2) Every agreement made under paragraph 24 of subsection (1) and every award made under paragraph 26 or 27 of subsection (1), and every agreement or award renegotiated under clause (b) of this subsection,

(a) shall be filed with the Commission forthwith after the making thereof, and the Commission may, notwithstanding any defect in the establishment of the negotiating agency or of the board of arbitration, as the case may be, by order declare the agreement or award, or renegotiated agreement or award, or part thereof, to come into force on the day it is so filed or on such later date as is named in the agreement or award or renegotiated agreement or award, as the case may be, and, subject to clause (b), to remain in force for one year or for such period as is provided in the agreement or award or renegotiated agreement or award; and

(b) may at any time upon an order of the Commission be renegotiated in whole or in part in such manner as the Commission determines.

R.S.O. 1980,
c. 446, not
to apply

(3) The *Regulations Act* does not apply to any order of the Commission made under subsection (2).

Limited
effect

(4) Any regulation made under this section may be limited as to time and place.

Form of
agreement

(5) An agreement filed with the Commission under subsection (2) shall be in the form prescribed in the regulations, and the Commission may refuse to file an agreement that is not in such form.

Delegation
of powers to
marketing
boards

(6) The Commission may delegate to a marketing board such of its powers under subsection (1) as it considers necessary, and may at any time terminate any such delegation.

Authority of
marketing
board to
make
regulations

(7) Where the Commission authorizes a marketing board to exercise any of the powers mentioned in subsection (1), the marketing board, in the exercise of such powers, may make regulations or orders or issue directions. R.S.O. 1970, c. 273, s. 8 (2-7).

(8) Everything that is done by a marketing board under the authority of paragraph 12 of subsection (1) shall be deemed to be of an administrative and not of a legislative nature. 1972, c. 155, s. 1 (2). Acts of marketing board deemed administrative

(9) Where the Commission delegates to a marketing board any of its powers to promote, control and regulate the marketing of a regulated product, the Commission may at any time, Limitations on powers, etc., of marketing boards

(a) limit the powers of the marketing board in any or all respects; and

(b) revoke any regulation, order or direction of the marketing board made or purporting to be made under such powers.

(10) The Commission may require any marketing board,

(a) to furnish to the Commission particulars of any proposed change in the purposes of the plan at least ten days before the proposed change becomes effective; Other powers of Commission with respect to marketing boards

(b) to carry out any purpose of the plan that the Commission considers necessary or advisable;

(c) to vary any purpose of the plan as the Commission considers necessary or advisable; and

(d) to cease or desist from the carrying out of any purpose or proposed purpose of the plan that the Commission considers unnecessary or inadvisable. R.S.O. 1970, c. 273, s. 8 (8, 9).

9.—(1) Every person, when requested so to do by an officer or field-man of the Commission or a person appointed by the Commission to inspect the books, records, documents, equipment and premises of persons engaged in the producing, processing or marketing of milk or milk products, shall, in respect of milk and milk products, produce such books, records and documents and permit inspection thereof and supply extracts therefrom and permit inspection of such equipment and premises. Production of books, etc., to Commission

(2) No person shall hinder or obstruct an officer or field-man of the Commission or a person appointed by the Commission to inspect the books, records, documents, equipment and premises of persons engaged in the producing, processing or marketing of milk or milk products in the performance of his duties or refuse to permit him to carry out his duties or refuse to furnish him with information or furnish him with false information. Obstruction of officers of Commission

Certificate
of appoint-
ment by
Commission

(3) The production by any person of a certificate of appointment by the Commission to inspect the books, records, documents, equipment and premises of persons engaged in the producing, processing or marketing of milk or milk products, purporting to be signed by the chairman and secretary of the Commission, shall be accepted by any person engaged in the producing, processing or marketing of milk or milk products as proof of such appointment. R.S.O. 1970, c. 273, s. 9.

Production
of books,
etc., to
marketing
board

10.—(1) Every person, when requested so to do by an officer of a marketing board or a person appointed by a marketing board to inspect the books, records, documents and premises of persons engaged in producing or marketing a regulated product, shall, in respect of the regulated product, produce such books, records and documents and permit inspection thereof and supply extracts therefrom and permit inspection of such premises.

Obstruction
of officers of
marketing
board

(2) No person shall hinder or obstruct an officer of a marketing board or a person appointed by a marketing board to inspect the books, records, documents and premises of persons engaged in producing or marketing a regulated product in the performance of his duties or refuse to permit him to carry out his duties or refuse to furnish him with information or furnish him with false information.

Certificate
of appoint-
ment by
marketing
board

(3) The production by any person of a certificate of appointment by a marketing board to inspect the books, records, documents and premises of persons engaged in producing or marketing a regulated product, purporting to be signed by the chairman and secretary of the marketing board, shall be accepted by any person engaged in the producing or marketing of the regulated product as proof of such appointment. R.S.O. 1970, c. 273, s. 10.

Producer-
distributors

11.—(1) Any person who is a producer and distributor is entitled in his respective capacities as a producer and as a distributor to all the rights and privileges and is subject to all the duties and obligations of a producer and of a distributor.

Idem

(2) Any person who is a producer and distributor shall be deemed to have received in his capacity as a distributor from himself in his capacity as a producer the milk produced by him that he distributes and to have contracted in that capacity with himself in his capacity as a producer for the marketing thereof upon the condition that the regulations, orders, directions, agreements and awards and the renegotiated agreements and awards made under this Act apply. R.S.O. 1970, c. 273, s. 11.

(3) Where a producer or producers, by himself or them- ^{Idem} selves, or through a corporation of which he or they are members or shareholders, or through an agent, arrange for the distributing, on his or their account, by a distributor of any milk produced by him or them, he or they shall be deemed to be a producer and distributor or producers and distributors for the purposes of subsections (1) and (2). 1977, c. 64, s. 2.

12.—(1) Any person who is a producer and processor is ^{Producer-processors} entitled in his respective capacities as a producer and as a processor to all the rights and privileges and is subject to all the duties and obligations of a producer and of a processor.

(2) Any person who is a producer and a processor shall be ^{Idem} deemed to have received in his capacity as a processor from himself in his capacity as a producer the milk produced by him that he processes and to have contracted in that capacity with himself in his capacity as a producer for the marketing thereof upon the condition that the regulations, orders, directions, agreements and awards and the renegotiated agreements and awards made under this Act apply. R.S.O. 1970, c. 273, s. 12.

(3) Where a producer or producers, by himself or them- ^{Idem} selves, or through a corporation of which he or they are members or shareholders, or through an agent, arrange for the processing, on his or their account, by a processor, of any milk produced by him or them, he or they shall be deemed to be a producer and processor or producers and processors for the purposes of subsections (1) and (2). 1977, c. 64, s. 3.

13.—(1) The Minister may appoint a Director for the ^{Minister may appoint Director} purposes of this Act. 1978, c. 100, s. 15 (2).

(2) The Director shall be responsible for the administra- ^{Responsi- bility of Director} tion and enforcement of this Act and the regulations with respect to the quality of milk, milk products and fluid milk products within Ontario. 1972, c. 162, s. 4, *part*; 1978, c. 100, s. 15 (2).

(3) The Director shall exercise such powers and perform ^{Powers and duties of Director} such duties as are conferred or imposed upon him by or under this Act. 1972, c. 162, s. 4, *part*; 1978, c. 100, s. 15 (2).

(4) Such officers, field-men and other employees as are ^{Appoint- ments} considered necessary for the exercise of the powers and the performance of the duties of the Director may be appointed under the *Public Service Act*. 1972, c. 162, s. 4, *part*; 1978, ^{R.S.O. 1980, c. 418}

Production
of books,
etc., to
field-man

14.—(1) Every person engaged in the producing, processing or marketing of milk or milk products, when requested so to do by a field-man appointed for the exercise of the powers and the performance of the duties of the Director, shall, in respect of milk and milk products, produce his books, records and documents and permit inspection thereof and furnish copies thereof or extracts therefrom and permit inspection of his premises and any equipment, milk or milk products therein.

Obstruction
of field-man

(2) No person shall hinder or obstruct an officer or field-man mentioned in subsection (1) in the course of his duties, furnish him with false information or refuse to furnish him with information.

Permit to
construct
plant

(3) The production by a field-man mentioned in subsection (1) of a certificate of his appointment purporting to be signed by the Director shall be accepted by any person engaged in the producing, processing or marketing of milk or milk products as proof of such appointment. 1974, c. 18, s. 2.

CONSTRUCTION AND OPERATION OF PLANTS

Permit to
alter plant

15.—(1) No person shall construct or alter any building intended for use as a plant without a permit from the Director. R.S.O. 1970, c. 273, s. 13 (1); 1972, c. 162, s. 5 (1).

Conditions
precedent
to issue of
permit

(2) No person shall alter a plant without a permit from the Director. R.S.O. 1970, c. 273, s. 13 (2); 1972, c. 162, s. 5 (2).

Certificate
of appoint-
ment of
field-man

(3) No permit shall be issued by the Director unless,

(a) in the opinion of the Director, the plant is necessary and desirable, having regard to the needs of the producers in the locality in which it is proposed to locate the plant and to the facilities of the existing plants in operation; and

(b) the proposed plant complies with the regulations. R.S.O. 1970, c. 273, s. 13 (3); 1972, c. 162, s. 5 (3, 4).

Licence to
operate
plant

16.—(1) No person shall operate a plant without a licence therefor from the Director. R.S.O. 1970, c. 273, s. 14 (1); 1972, c. 162, s. 6 (1).

Licence to
operate as
distributor

(2) No person shall carry on business as a distributor without a licence therefor from the Director. R.S.O. 1970, c. 273, s. 14 (2); 1972, c. 162, s. 6 (2).

17.—(1) Except as provided in the regulations, no person shall process, sell, offer for sale or have in possession for sale butter that has a tint or shade containing less than one and six-tenths degrees or more than ten and one-half degrees of yellow, or of yellow and red collectively, measured in terms of the Lovibond tintometer scale or the equivalent of such measurement. Shade of butter

(2) Except as provided in the regulations, no person shall process, sell, offer for sale or have in possession for sale reconstituted milk. Reconstituted milk R.S.O. 1970, c. 273, s. 15.

18. All milk and cream received at a plant shall be paid for on the basis of its milk-fat content or on such other basis as is prescribed in the regulations. Basis of payment for milk and cream R.S.O. 1970, c. 273, s. 16.

19.—(1) Where, upon the application of a co-operative corporation to which the *Co-operative Corporations Act* applies and of which one of the objects is to engage in the transportation of milk, the Commission is satisfied that more than three-quarters of the shareholders or members of the corporation are producers supplying milk to one or more plants, the Commission shall issue a certificate to that effect to the Minister of Transportation and Communications, and the corporation in respect of which the certificate is issued is not required to have an operating licence under the *Public Commercial Vehicles Act* for the purpose of transporting the milk of such producers. Transportation of milk by producers, co-operative
R.S.O. 1980, c. 91 R.S.O. 1970, c. 273, s. 17 (1); 1972, c. 1, s. 100 (2); 1973, c. 104, s. 1 (2).

(2) The Commission may, after a hearing, revoke a certificate where the corporation ceases to meet the qualifications required by subsection (1), and shall give notice of the revocation to the Minister of Transportation and Communications. Revocation of certificates R.S.O. 1970, c. 273, s. 17 (2); 1972, c. 1, s. 100 (2).

20. Subject to the approval of the Lieutenant Governor in Council, the Commission may make regulations, Regulations with respect to the operation of plants

1. providing for the issue, renewal, suspension or revocation of or refusal to issue or renew licences for the operation of any class of plant, and prescribing the fees payable for licences or the renewal thereof;
2. providing for the issue, renewal, suspension or revocation of or refusal to issue or renew licences for any class of distributor, and prescribing the fees payable for licences or the renewal thereof;

3. prescribing the terms and conditions upon which licences under paragraphs 1 and 2 are issued, renewed, suspended or revoked;
4. requiring the furnishing of security or proof of financial responsibility by any class of distributor or by any person engaged in the operation of any class of plant;
5. providing for the administration, forfeiture and disposition by the Commission or Director of bonds or any moneys recovered under any such bonds or any moneys or securities furnished as proof of financial responsibility by a distributor or by an operator of a plant;
6. providing for the submission of drawings and specifications for the construction or alteration of a building intended for use as a plant or for the alteration of a plant;
7. prescribing the methods of construction or alteration of a building intended for use as a plant and the materials that shall be used for such construction or alteration;
8. prescribing the location of plants, the equipment that shall be used in connection with plants and the sanitary requirements for plants;
9. providing for the issue of permits for the construction or alteration of a building intended for use as a plant and for the alteration of a plant, and prescribing the terms and conditions therefor;
10. respecting the health of cows;
11. respecting sanitary conditions of cows, premises on which cows are kept or milked and the equipment used in connection with the producing, handling, storing or transporting of milk or cream, or any class thereof;
12. respecting the premises and equipment used in connection with the producing, handling, storing, testing, or transporting of milk or cream, or any class thereof;
13. prohibiting the delivering, selling or offering for sale to a plant or the receiving at a plant of milk or cream, or any class thereof, that is not produced,

- handled, stored, collected, delivered, supplied, received or transported in accordance with the regulations or that has been rejected in accordance with the regulations;
14. prescribing conditions for the delivering, supplying, selling or offering for sale to a plant or the receiving at a plant of milk or cream, or any class thereof, that has been graded at or on behalf of another plant in accordance with the regulations;
 15. providing for the addition of a food colouring to milk or cream, or any class thereof, that has been delivered or offered for sale to a plant and rejected in accordance with the regulations;
 16. governing the collection, transportation, delivery, handling, storing, supplying or receiving of milk or cream, or any class thereof, and prescribing the time therefor;
 17. providing for the identification, labelling and use of containers used for transporting milk or cream, or any class thereof;
 18. providing for the cleaning and sanitation of vehicles used in transporting, collecting, delivering, supplying or receiving milk or cream, or any class thereof, and prescribing methods therefor;
 19. respecting the quality of milk or cream, or any class thereof, delivered, supplied, sold or offered for sale to a plant or received at a plant;
 20. providing for,
 - (a) the control of the quality of milk by the imposing on and collecting from a producer of penalties where any milk supplied by the producer fails to comply with the standards of quality for such milk prescribed by the regulations or is produced on premises or with equipment that fails to comply with the regulations and, without limiting the generality of the foregoing, where such milk,
 - (i) contains any substance prohibited by the regulations,

- (ii) contains a substance in excess of the amount thereof permitted by the regulations, or
 - (iii) has a substance removed therefrom contrary to the regulations;
 - (b) the terms and conditions under which, and the times at which, the penalties are payable;
 - (c) the amount of the penalties and the method by which the penalties are calculated;
 - (d) the payment of the penalties to the marketing board constituted to administer any plan established for the control and regulation of the marketing of milk under this Act; and
 - (e) the use of the penalties by such marketing board for the purposes mentioned in paragraph 19 of subsection 8 (1);
21. providing for the pasteurizing of milk or cream used for the manufacture of a milk product;
 22. establishing classes of milk, cream, milk products or fluid milk products;
 23. establishing grades for milk or cream, or any class thereof;
 24. providing for the selecting, grading, rejecting, weighing, sampling and testing of milk or cream, or any class thereof, sold or offered for sale;
 25. providing for the fees payable for the selecting, grading, rejecting, weighing, sampling or testing of milk or cream, or any class thereof;
 26. prescribing the tests, procedures to be followed and equipment to be used in testing the composition and quality of milk or cream or any milk product;
 27. providing for the taking of samples of milk or cream or any milk product at the expense of the owner for the purpose of testing and for the identification and labelling of containers used therefor;

28. providing for the approval of laboratories for the purpose of testing milk, cream and milk products;
29. providing for the settlement of disputes in connection with the selecting, grading, rejecting, weighing, sampling and testing of milk or cream and the payment for the milk or cream;
30. establishing classes of buttermakers, cheesemakers, milk and cream testers and milk and cream graders;
31. providing for the examination and re-examination of persons applying for certificates for any class of butter-maker, cheesemaker, milk and cream tester or milk and cream grader;
32. prescribing the qualifications for persons to whom certificates may be issued;
33. providing for the issue, renewal, suspension or revocation of or refusal to issue or renew certificates, and prescribing the fees payable for certificates or the renewal thereof;
34. prescribing the terms and conditions upon which certificates are issued, renewed, suspended or revoked;
35. prescribing the basis, terms and manner of payments for milk or cream, or any class thereof, purchased from producers;
36. providing for the establishment and the manner of payment of price differentials for any grade of milk or cream, or any class thereof;
37. providing for the establishment and the manner of payment of price differentials for milk-fat in milk or any class thereof;
38. designating classes of producers;
39. designating classes of distributors and transporters;
40. defining areas, and designating them as distribution areas;
41. providing for the designation on licences, issued to distributors, of the distribution area or municipality or part thereof in which the distributor may deliver, sell or distribute fluid milk products;

42. prohibiting a distributor from delivering, selling or distributing fluid milk products in any distribution area or municipality or part thereof other than the distribution area, municipality or part thereof designated on his licence;
43. designating as a milk product any product processed or derived in whole or in part from milk;
44. governing the methods of and the equipment used in processing milk or cream, or any class thereof, or in manufacturing any milk product;
45. providing for the standards of quality for and the composition of any milk product;
46. defining and designating classes of milk and milk products as fluid milk products;
47. providing for the minimum and maximum percentages of milk-fat, and the minimum percentage of milk solids, other than milk-fat, in any fluid milk product;
48. regulating and prohibiting the addition to or removal from fluid milk products of any substance, and regulating and prohibiting the sale of fluid milk products, or any class thereof, to which the substance has been added or from which the substance has been removed;
49. prescribing the types and sizes of containers that shall be used for fluid milk products;
50. respecting the advertising in respect of and the labelling of containers for fluid milk products, or any class of fluid milk products;
51. regulating retail or wholesale deliveries of fluid milk products, or any class of fluid milk products, by distributors;
52. prohibiting retail or wholesale deliveries of fluid milk products, or any class of fluid milk products, by distributors on any day or days;
53. establishing classes of reconstituted milk, providing for the issue, suspension and revocation of permits for the manufacture and sale of any class of reconstituted milk, and prescribing the fees payable for such permits and the records and returns to be made by the holders of such permits;

54. prescribing the standards of quality for and the composition of any class of reconstituted milk;
55. governing the advertising and the labelling of containers for any class of reconstituted milk;
56. prescribing the books, records and documents to be kept by distributors and operators of plants and the period for which such books, records and documents shall be kept, and providing for the inspection of such books, records and documents;
57. providing for the issue to producers of statements by distributors and operators of plants;
58. providing for sanitary standards and requirements for buildings and premises in which milk products, or any class thereof, are manufactured, stored, graded or packed;
59. prohibiting the buying or selling of and the trafficking in milk or cream, or any class thereof, by transporters;
60. requiring producers, transporters, processors and distributors to furnish to the Commission or Director such information or returns as the Commission or Director determines;
61. providing for the detention and disposal of any milk, cream, milk product, fluid milk product or reconstituted milk produced, processed or marketed in violation of this Act or the regulations;
62. establishing classes of field-men, and prescribing the powers and duties of field-men or any class thereof;
63. prescribing forms and providing for their use;
64. exempting from this Act or the regulations, or any part thereof, any plant or class of plants, any person or class of persons, or any milk product or any class, variety or grade of milk product;
65. designating milk as Grade A milk, industrial milk or reconstituted milk;
66. respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. R.S.O. 1970, c. 273, s. 18; 1972, c. 162, s. 7; 1974, c. 62, s. 1.

MUNICIPAL BY-LAWS

Interpre-
tation**21.**—(1) In this section,

(a) “municipality” means a city, town, village, township or improvement district;

(b) “vendor” means a person who sells fluid milk products to a consumer or a person who sells fluid milk products to any person for resale.

Licensing
by-laws, etc.

(2) The council of any municipality may pass by-laws for licensing, regulating and governing vendors, and for revoking such licences.

Where
licence
required

(3) No person shall be a vendor in a municipality in which any such by-law is in force without a licence therefor under this section.

Scope of
by-laws

(4) Notwithstanding the provisions of this or any other Act, no council of a municipality shall by by-law require that fluid milk products sold in the municipality be produced or processed in the municipality or in any other designated area.

By-laws
prescribing
hours of
delivery

(5) The council of any municipality may pass by-laws prescribing the hours during which fluid milk products may be delivered within such municipality by vendors.

Municipal
inspectors

(6) The council of any municipality may by by-law appoint inspectors for the enforcement of this section and of any by-law passed under this section. R.S.O. 1970, c. 273, s. 19.

GENERAL

Offences

22. Every person who contravenes any of the provisions of this Act or the regulations, or of any plan, or of any order or direction of the Commission or the Director or any marketing board, or of any agreement or award or renegotiated agreement or award filed with the Commission, or of any by-law under this Act, is guilty of an offence and on conviction is liable, for a first offence, to a fine of not more than \$50 and, for a subsequent offence, to a fine of not less \$50 and not more than \$500. R.S.O. 1970, c. 273, s. 20; 1972, c. 162, s. 8.

Injunction
proceedings

23. Where it is made to appear from the material filed or evidence adduced that any offence against this Act or the regulations or any plan, order, direction, agreement, award or renegotiated agreement or award made under this Act

has been or is being committed, the Supreme Court or a judge thereof may, upon the application of the Commission, the Director or a marketing board, enjoin any transporter, processor, distributor or operator of a plant from carrying on business as a transporter, processor, distributor or operator of a plant, absolutely or for such period as seems just, and any injunction cancels the licence of the transporter, processor, distributor or operator of a plant named in the order for the same period. R.S.O. 1970, c. 273, s. 21; 1974, c. 18, s. 3.

24.—(1) Every person who fails to pay at least the minimum price established for a regulated product or for milk or cream in an agreement or award filed with the Commission or the price of a regulated product determined by a marketing board is, in addition to the fine provided for in section 22, liable to a penalty of an amount equal to the amount of such minimum or determined price, less any amount paid by such person as payment in full or in part for such regulated product, milk or cream, and less any amount paid by such person for such regulated product, milk or cream pursuant to an order of the Commission under subsection 4 (3). Additional penalty for failure to pay minimum price

(2) Every penalty imposed under subsection (1) shall be paid to the marketing board or to the Commission, and the marketing board or the Commission, as the case may be, shall, Disposition of additional penalty

- (a) pay the money to the person who failed to receive at least the minimum price; or
- (b) use the money to stimulate, increase and improve the marketing of the regulated product or of milk or cream. R.S.O. 1970, c. 273, s. 22.

25. Where, in any action or prosecution under this Act, production of any agreement, award, order, regulation, direction, rule, resolution, determination or minute of the Commission or a marketing board or of any order or direction of the Director is required, any document purporting to be a copy of such agreement, award, order, regulation, direction, rule, resolution, determination or minute, certified to be a true copy thereof by the chairman or secretary of the Commission or the marketing board, or by the Director, as the case may be, is admissible in evidence as proof of the making and of the text thereof without production of the original document and without proof of the signature of the person purporting to have certified it. R.S.O. 1970, c. 273, s. 23; 1972, c. 162, s. 9. Certified copies admissible in evidence

Rebuttable
presumption

26. In any prosecution for an offence under this Act, the act or omission of an act, in respect of which the prosecution was instituted, shall be deemed to relate to the marketing within Ontario of milk, cream or cheese; or any combination thereof, unless the contrary is proven. R.S.O. 1970, c. 273, s. 24.

Definitions
in
regulations

27.—(1) Any word or expression used in the Act or the regulations may be defined in the regulations for the purpose of the regulations.

Regulations
may be
limited

(2) Any regulation may be limited as to time or place, or to both. R.S.O. 1970, c. 273, s. 25.

Authority
may be
granted to
Canadian
Dairy
Commission

28.—(1) The Lieutenant Governor in Council may grant authority to the Canadian Dairy Commission to regulate the marketing within Ontario of a regulated product or a milk product and for such purposes,

- (a) to exercise any power that it may exercise in relation to the marketing of such regulated product or milk product in interprovincial or export trade;
- (b) to exercise, in relation to the marketing of such regulated product, any power that may be exercised by a marketing board in relation to a regulated product; and
- (c) to exercise, in relation to the marketing of such milk product, any power that is like a power that may be exercised by a marketing board in relation to a regulated product.

Milk product
deemed to be
a regulated
product

(2) Where authority is granted under subsection (1) in relation to any milk product, such milk product shall be deemed to be,

R.S.O. 1980,
c. 77

- (a) a regulated product for the purposes of the *Commodity Boards and Marketing Agencies Act*; and
- (b) the regulated product in relation to the marketing of which a levy is fixed, imposed and collected under the *Commodity Boards and Marketing Agencies Act*. 1979, c. 2, s. 1.

MISCELLANEOUS

Moneys

29. The moneys required for the purposes of this Act shall be paid out of the moneys appropriated therefor by the Legislature. R.S.O. 1970, c. 273, s. 27.

CHAPTER 267

Mineral Emblem Act

1. The mineral known as amethyst is adopted as and shall ^{Mineral emblem} be deemed to be the mineral emblem of the Province of ^{of Ontario} Ontario. 1975, c. 59, s. 1.

CHAPTER 268

Mining Act

1. In this Act,

Interpre-
tation

1. “agent”, when used in Parts IX and XI, means a person having, on behalf of the owner, the care or direction of a mine or plant or a part thereof; R.S.O. 1970, c. 274, s. 1, par. 1.
2. “Commissioner” means the Mining and Lands Commissioner appointed under the *Ministry of Natural Resources Act*; R.S.O. 1970, c. 274, s. 1, par. 2; 1973, c. 105, ss. 3, 4. R.S.O. 1980,
c. 285
3. “Crown” means Crown in right of Ontario;
4. “Crown land” does not include land in the actual use or occupation of the Crown, or of a public department of the Government of Canada or of Ontario, or of an officer or servant thereof, or under lease or licence of occupation from the Crown or the Minister of Natural Resources, or set apart or appropriated by lawful authority for a public purpose or vested in The Ontario Northland Transportation Commission; R.S.O. 1970, c. 274, s. 1, pars. 3, 4.
5. “Deputy Minister” means the Deputy Minister of Natural Resources; R.S.O. 1970, c. 274, s. 1, par. 6; 1972, c. 4, s. 12.
6. “Director” means the Director of the Lands Management Branch; 1973, c. 106, s. 1 (1).
7. “holder”, when referring to the holder of an unpatented mining claim, a boring permit, a quarry permit or a licence of occupation issued under this Act, means the holder of record;
8. “in place”, when used in reference to mineral, means in the place or position where originally formed in the solid rock, as distinguished from being in loose, fragmentary or broken rock, boulders, float, beds or deposits of gold or platinum-bearing sand, earth, clay, or gravel, or placer; R.S.O. 1970, c. 274, s. 1, pars. 8, 9.

9. "inspector" includes "engineer" as defined in clause 160 (a), a geologist on the staff of the Ministry and any other officer or agent designated by the Minister to carry out an inspection or investigation relating to the mining industry; R.S.O. 1970, c. 274, s. 1, par. 10; 1972, c. 1, s. 1.
10. "lease" means a leasehold patent; R.S.O. 1970, c. 274, s. 1, par. 11.
11. "licensee" means a person, mining partnership or company holding a prospector's licence issued under this Act or a renewal thereof; R.S.O. 1970, c. 274, s. 1, par. 12; 1972, c. 116, s. 1 (1).
12. "machinery" includes steam and other engines, boilers, compressors, furnaces, milling and crushing apparatus, hoisting and pumping equipment, chains, trucks, tramways, tackle, blocks, ropes and tools, and all appliances used in or about or in connection with a mine or plant; R.S.O. 1970, c. 274, s. 1, par. 13.
13. "metal tag" means the metal tag supplied by the mining recorder or a substitute therefor supplied by the Ministry; R.S.O. 1970, c. 274, s. 1, par. 14; 1972, c. 1, s. 1.
14. the noun "mine", except as defined in Part IX, includes any opening or excavation in, or working of the ground for the purpose of winning, opening up or proving any mineral or mineral-bearing substance, and any ore body, mineral deposit, stratum, rock, earth, clay, sand or gravel, or place where mining is or may be carried on, and all ways, works, machinery, plant, buildings and premises below or above ground belonging to or used in connection with the mine, and also any quarry, excavation or opening of the ground made for the purpose of searching for or removal of mineral rock, stratum, earth, clay, sand or gravel and any roasting or smelting furnace, concentrator, mill, work or place used for or in connection with washing, crushing, sifting, reducing, leaching, roasting, smelting, refining, treating or research on any of such substances;
15. the verb "mine" and the word "mining", except as defined in Part IX, include any mode or method of working whereby the earth or any rock, stratum, stone or mineral-bearing substance may be disturbed, removed, washed, sifted, leached,

roasted, smelted, refined, crushed or dealt with for the purpose of obtaining any mineral therefrom, whether it has been previously disturbed or not;

16. "minerals" includes gold and silver, all rare and precious metals and coal, natural gas, oil and salt;
17. "mining lands" includes the lands and mining rights patented or leased under or by authority of a statute, regulation, or order in council, respecting mines, minerals or mining, and also lands or mining rights located, staked out, used or intended to be used for mining purposes;
18. "mining rights" means the ores, mines and minerals on or under any land where they are or have been dealt with separately from the surface; R.S.O. 1970, c. 274, s. 1, pars. 15-19.
19. "Minister" means the Minister of Natural Resources; R.S.O. 1970, c. 274, s. 1, par. 20; 1972, c. 4, s. 12.
20. "Ministry" means the Ministry of Natural Resources; R.S.O. 1970, c. 274, s. 1, par. 5; 1972, c. 4, s. 12.
21. "owner", when used in Parts IX and XI, includes every person, mining partnership and company being the immediate proprietor or lessee or occupier of a mine or plant, or a part thereof, or of any land located, patented or leased as mining land, but does not include a person or a mining partnership or company receiving merely a royalty, rent or fine from a mine, plant or mining lands, or being merely the proprietor of a mine, plant or mining lands subject to a lease, grant or other authority for the working thereof, or the owner of the surface rights and not of the ore or minerals; R.S.O. 1970, c. 274, s. 1, par. 21.
22. "patent" means a grant from the Crown in fee simple or for a less estate made under the Great Seal, and includes leasehold patents and freehold patents, but in sections 4, 28, 62, 96, 97, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 181, 182, 190, 194, 197 and 204 the meaning is limited to freehold patents; R.S.O. 1970, c. 274, s. 1, par. 22; 1972, c. 116, s. 1 (2).

23. "prescribed" means prescribed by or under the authority of this Act;
24. "recorder" means the mining recorder of the mining division in which is situate the land in respect of which an act, matter or thing is to be done;
25. "regulations" means the regulations made under this Act; R.S.O. 1970, c. 274, s. 1, pars. 23-25.
26. "Supervisor" means the Supervisor of the Mining Lands Section; 1973, c. 106, s. 1 (2).
27. "surface rights" means every right in land other than the mining rights;
28. "unpatented", when referring to land or mining rights, means land or mining rights for which a patent, lease, licence of occupation or any other form of Crown grant is not in effect;
29. "unpatented mining claim" means a mining claim that is in good standing and for which the Crown has not issued a patent, lease or licence of occupation;
30. "valuable mineral in place" means a vein, lode or deposit of mineral in place appearing at the time of discovery to be of such a nature and containing in the part thereof then exposed such kind and quantity of mineral or minerals in place, other than limestone, marble, clay, marl, peat or building stone, as to make it probable that the vein, lode or deposit is capable of being developed into a producing mine likely to be workable at a profit. R.S.O. 1970, c. 274, s. 1, pars. 27-30.

Application
to sales, etc.,
for other
purposes
R.S.O. 1980,
c. 413

2. Nothing in this Act affects the sale, lease or location, for agricultural or other purposes, of any land opened for sale or free grant under the *Public Lands Act* or otherwise. R.S.O. 1970, c. 274, s. 2.

Forms

3. The Lieutenant Governor in Council may make regulations prescribing forms and providing for their use. R.S.O. 1970, c. 274, s. 3.

PART I

ADMINISTRATION

4.—(1) All public lands for mining purposes and for the purposes of the mineral industry and all regulations made with respect to mines or minerals or mining or mining lands or mining rights or the mineral industry shall be administered by the Minister. Adminis-
tration by
Minister

(2) All patents, leases, licences or other instruments of title and all agreements, contracts or other writings relating to mines or minerals or mining lands or mining rights or the mineral industry shall be signed and executed by the Minister or by the Deputy Minister. R.S.O. 1970, c. 274, s. 7. Execution of
instruments

5. The Lieutenant Governor in Council may appoint such officers and agents as he considers necessary, who shall be officers of the Ministry and shall perform such duties as are assigned to them by this Act or by the regulations. R.S.O. 1970, c. 274, s. 8; 1972, c. 1, s. 1. Officers
and agents,
appointment

6.—(1) The Lieutenant Governor in Council may appoint for each mining division a mining recorder, who shall be an officer of the Ministry. R.S.O. 1970, c. 274, s. 9 (1); 1972, c. 1, s. 1. Mining
recorder

(2) Where a mining recorder is absent because of illness or for any other reason, the Minister may appoint in writing a person to act as mining recorder *pro tempore*, but such person shall exercise only such of the duties of the recorder as are defined in the appointment. Appointment
in absence
of mining
recorder

(3) Where a mining recorder is absent because of illness or for any other reason and no appointment is made under subsection (2), the Supervisor is *pro tempore* mining recorder for that division and may exercise all of the duties of the recorder. R.S.O. 1970, c. 274, s. 9 (2, 3). Idem

7. Every recorder shall keep such books for the recording of mining claims, applications and other entries therein as are directed by the Minister, and such books shall be open to inspection by any person on payment of a fee of 25 cents for each claim or application examined, and every recorder shall also keep displayed in his office one or more maps showing the territory included in his mining division and shall mark thereon all claims as they are Books and
maps to
be kept by
recorder

recorded, and there shall be no charge for examining such map or maps. R.S.O. 1970, c. 274, s. 10.

Right
to inspect
documents

8. Every document filed in the recorder's office shall, during office hours, be open to inspection by anyone on payment of the prescribed fee. R.S.O. 1970, c. 274, s. 11.

Evidence
of records

9. Every copy of or extract from an entry in any of such books, and of any document filed in the recorder's office, certified to be a true copy or extract by the recorder, shall be received in any court as *prima facie* evidence of the matter certified by him without proof of his appointment, authority or signature. R.S.O. 1970, c. 274, s. 12.

Employment
of experts,
etc.
R.S.O. 1980,
c. 418

10. Notwithstanding anything in the *Public Service Act*, the Minister may employ any professor, instructor, or other person to investigate the mineral resources of Ontario, or for any work in connection with this Act, and may pay him for such services at such rate as is agreed upon, out of the moneys that are appropriated by the Legislature for that purpose. R.S.O. 1970, c. 274, s. 13.

Inspection
of minerals

11.—(1) An inspector may enter upon any lands for the purpose of gathering information respecting minerals or mineral rights and may enter any structure or works for the purpose of gathering information respecting ore and may take therefrom representative samples of minerals and ore sufficient for the purpose of testing or analysis.

Enforcement

(2) An inspector shall be deemed to be an officer appointed under this Act for the purposes of section 172. R.S.O. 1970, c. 274, s. 14.

Officers
not to be
interested
in mining
lands or
claims
situate in
Ontario

12.—(1) No officer appointed under this Act shall directly or indirectly, by himself or by any other person, purchase or become interested in any mining lands, mining rights or mining claims situate in Ontario, and any such purchase or interest is void.

Penalty

(2) Any officer contravening any provision of subsection (1) forfeits his office and is, in addition thereto, liable to a penalty of \$500 to be recovered in any court of competent jurisdiction by any person who sues for it. R.S.O. 1970, c. 274, s. 15.

Ex officio
justices of
the peace

13.—(1) The Commissioner, Director and Supervisor are *ex officio* justices of the peace for every county and district in Ontario

and a recorder in his division is *ex officio* a justice of the peace for the county or district in which any part of his division lies, and it is not necessary that they possess any residential or property qualification. R.S.O. 1970, c. 274, s. 18 (1); 1972, c. 1, s. 1, *revised*.

(2) Every mining recorder is *ex officio* a commissioner for taking affidavits in Ontario. R.S.O. 1970, c. 274, s. 18 (2); *revised*. Recorders,
commis-
sioners for
affidavits

14. The Lieutenant Governor in Council may divide the Province into mining divisions and may alter the number, limits or extent thereof. R.S.O. 1970, c. 274, s. 20. Mining
divisions

15.—(1) Except as in this Act otherwise provided, the recorder's office is the proper office for filing and recording all applications, documents and other instruments required or permitted to be filed or recorded under this Act, affecting any unpatented mining claim or any right, privilege or interest that may be acquired under this Act respecting an unpatented mining claim, and all such applications, documents and instruments may, before patent, be filed or recorded in such office, but, after patent, the *Land Titles Act* or the *Registry Act*, as the case may be, applies. Certain
documents
filed in
recorder's
office

R.S.O. 1980,
cc. 230, 445

(2) Except as in this Act otherwise provided, the Minister's office is the proper office for filing and recording all applications, documents and other instruments required or permitted to be filed or recorded under this Act, affecting any mining licence of occupation or any right, privilege or interest that may be acquired under this Act respecting a mining licence of occupation, or affecting any grant under this Act or the regulations that is not a grant that may be registered under the *Land Titles Act* or the *Registry Act* or affecting any right, privilege or interest that may be acquired under this Act respecting such a grant, and the Minister may authorize an officer or officers to receive, scrutinize, approve and record any such applications, documents and other instruments. R.S.O. 1970, c. 274, s. 21. Certain
documents
filed in
Minister's
office

16. Where a part of Ontario is not included in a mining division or if there is no recorder for a mining division, all applications shall be made to the Ministry and all duties and powers of the recorder shall be performed and exercised by the Deputy Minister, and all acts, matters and things that in a mining division are to be done by or before a recorder shall be done by or before the Deputy Minister, and all such acts, matters and things that are to be done in the office of the recorder shall be done at the Ministry. R.S.O. 1970, c. 274, s. 22; 1972, c. 1, s. 1. Vacancy in
office of
recorder

Minister to furnish recorder with list of lands patented

17. Upon the issue of a patent by the Crown of mining lands or mining rights, the Minister shall give notice thereof to the recorder of the mining division in which the lands included in the patent are situate, and the recorder shall keep in his office a list of all such lands. R.S.O. 1970, c. 274, s. 23.

Licence required

18.—(1) No person or company not the holder of a prospector's licence shall prospect for minerals upon Crown lands or lands of which the mining rights are in the Crown, or stake out, record or acquire any unpatented mining claim, or area of land for boring permit, or acquire any right or interest therein. R.S.O. 1970, c. 274, s. 24 (1); 1972, c. 116, s. 2 (1).

Clerks or employees not to require licence

(2) A clerk or employee of a licensee performing clerical, manual or other services of like nature shall not be required to be the holder of a prospector's licence. R.S.O. 1970, c. 274, s. 24 (2); 1972, c. 116, s. 2 (2).

Who may receive licences

19.—(1) Any person over eighteen years of age and, subject to subsection (8), any company, is entitled to obtain a prospector's licence upon application therefor in the prescribed form and upon payment of the prescribed fee. R.S.O. 1970, c. 274, s. 25 (1); 1972, c. 116, s. 3.

Date and term of licence

(2) The licence shall be dated on the day of the issue thereof and it expires at midnight on the 31st day of March then next ensuing.

Licence not valid unless signed

(3) Subject to subsection (4), the licence is not valid unless it is signed by the holder thereof in the space provided on the licence.

Officer to sign for company

(4) Where the licensee is a company, the licence shall be signed by the president or secretary of the company.

Licence not transferable

(5) The licence is not transferable.

Licences to companies

(6) Licences to companies shall be issued only by the Minister or by the Deputy Minister.

Licences to individuals

(7) Licences to individuals may be issued by the Minister or the Deputy Minister or by any recorder. R.S.O. 1970, c. 274, s. 25 (2-7).

Proof required before licence is issued to company

(8) Where a company,

- (a) incorporated in Ontario, satisfies the Minister that it is so incorporated; or
- (b) incorporated outside Ontario, satisfies the Minister that it is so incorporated and that it is not required to be licensed under Part VIII of the *Corporations Act*; or
- (c) other than a company coming within clause (a) or (b), files with the Ministry a copy of the licence authorizing it to transact business or hold land in Ontario verified by an affidavit of an officer of the company,

R.S.O. 1980,
c. 95

a licence shall be issued to the company. R.S.O. 1970, c. 274, s. 25 (8); 1972, c. 1, s. 1.

20. Every prospector's licence shall be numbered, and shall also be lettered with a letter of the alphabet to indicate the office from which it was issued. R.S.O. 1970, c. 274, s. 26; 1972, c. 116, s. 4.

Numbering
and lettering
of licences

21. A prospector's licence held by a company does not entitle any shareholder, officer or employee thereof to the rights or privileges of a licensee and shall not be used for the staking of mining claims. R.S.O. 1970, c. 274, s. 27; 1972, c. 116, s. 5.

Effect of
licence to
company

22.—(1) A licensee is entitled to a renewal of his licence before its expiration upon making application therefor in the prescribed form and paying the prescribed fee, except as provided under subsection (5). R.S.O. 1970, c. 274, s. 28 (1); 1971, c. 102, s. 1 (1).

Renewal of
licences

(2) Licences to companies may be renewed by the Minister or the Deputy Minister, and licences to individuals may be renewed by the Minister or the Deputy Minister or by any recorder. R.S.O. 1970, c. 274, s. 28 (2).

Who
may issue
renewals

(3) The renewal shall bear date on the 1st day of April and shall be deemed to have been issued and shall take effect immediately upon the expiration of the licence of which it is a renewal, or of the last preceding renewal, as the case may be, except as provided under subsection (5). R.S.O. 1970, c. 274, s. 28 (3); 1971, c. 102, s. 1 (2).

Date and
effect of
renewal

(4) The renewal shall bear the same number and letter as the original licence and, after it comes into effect, it

Form

shall be deemed to be the licence of the licensee. R.S.O. 1970, c. 274, s. 28 (4).

Renewal of
licence for
lifetime of
holder by
Minister

(5) The Minister shall renew the licence of a person who has held a licence continuously for twenty-five years, without fee, and the licence shall remain in good standing during the lifetime of the licensee and shall expire at 12 o'clock midnight of the day of death of the licensee. 1971, c. 102, s. 1 (3).

Accidental
destruction
or loss of
licence

23.—(1) If a prospector's licence is accidentally destroyed or lost, the holder may,

(a) upon proof by statutory declaration that the original has been destroyed or lost and setting out the circumstances thereof; and

(b) upon payment of the prescribed fee,

obtain a duplicate thereof from the office of the Minister, Deputy Minister or any recorder. R.S.O. 1970, c. 274, s. 29 (1); 1972, c. 116, s. 6.

Substituted
licence

(2) Every such duplicate shall be marked "substituted licence" and shall bear the same date and number as the original licence. R.S.O. 1970, c. 274, s. 29 (2).

Not more
than one
licence

24.—(1) No person or company shall apply for or hold more than one prospector's licence. R.S.O. 1970, c. 274, s. 30 (1); 1972, c. 116, s. 7.

Refund
where more
than one
licence
issued

(2) A contravention of this section is an offence against this Act, but, where the Minister is satisfied that there was no improper intent and upon surrender of the unnecessary licence or licences, the Minister may relieve from the penalty and may direct a refund of the fee or fees paid. R.S.O. 1970, c. 274, s. 30 (2).

Production
of licence

25. Every licensee shall upon demand produce and exhibit his licence to an inspector or a recorder. R.S.O. 1970, c. 274, s. 31.

Licence to
date from
application

26. Where application for a licence or a renewal of a licence is made during the absence of a recorder from his office, the applicant may leave with the person in charge of the office his application and such documents as he is required to produce in order to obtain the licence or

renewal and the prescribed fee, and in every such case the licence or renewal when issued is as effective as if obtained at the time of the application, and the licence shall bear that date. R.S.O. 1970, c. 274, s. 32.

27.—(1) Where the Commissioner finds, after a hearing, that a licensee has been guilty of a wilful contravention of any of the provisions of this Act or the regulations, the Minister may, on the recommendation of the Commissioner, revoke the licence of the licensee and a licence shall not thereafter be issued to such licensee without the authority of the Minister. 1971, c. 50, s. 58 (2), *part*. Revocation
of licence

(2) Where a licence is revoked under subsection (1), the Minister shall determine and notify the holder of the licence revoked of the period of time during which a licence shall not be issued to him. R.S.O. 1970, c. 274, s. 34 (2). Idem

(3) Where a recorder finds, after a hearing, that a licensee has contravened any of the provisions of this Act or the regulations, the Minister may, upon the recommendation of the recorder, suspend the licence of the licensee. 1971, c. 50, s. 58 (2), *part*. Suspension
of licence

(4) Where a licence is suspended under subsection (3), the Minister shall determine and notify the holder of the licence suspended of the period of time during which his licence is suspended. Idem

(5) While a licence is suspended under subsection (3), the licensee may renew his licence or transfer claims to another licensee or report work, but he may not stake out or apply for a mining claim or acquire an unpatented mining claim or interest therein through transfer or obtain an extension of time in which to perform work or in which to apply for lease on any unpatented mining claim recorded in his name. R.S.O. 1970, c. 274, s. 34 (4, 5). Rights of
licensee
under
suspension

(6) A finding by the Commissioner that a licensee has wilfully contravened this Act or the regulations or by a recorder that a licensee has contravened this Act or the regulations, as the case may be, may be appealed in a like manner as any decision of the Commissioner or recorder, respectively, and the Minister shall give effect to the decision on the appeal. 1971, c. 50, s. 58 (3). Appeal

PART II

MINING CLAIMS

LANDS OPEN

Where
licensee may
prospect for
minerals

28. Except where otherwise provided, the holder of a prospector's licence may prospect for minerals and stake out a mining claim on any,

- (a) Crown lands, surveyed or unsurveyed;
- (b) lands, the mines, minerals or mining rights whereof have been reserved by the Crown in the location, sale, patent or lease of such lands where they have been located, sold, patented or leased after the 6th day of May, 1913,

not at the time,

- (c) under staking or record as a mining claim that has not lapsed or been abandoned, cancelled or forfeited; or
- (d) withdrawn by any Act, order in council, or other competent authority from prospecting, location or sale, or declared by any such authority to be not open to prospecting, staking out or sale as mining claims. R.S.O. 1970, c. 274, s. 35; 1972, c. 116, s. 9.

Claim may
be staked

29. A licensee may stake out a mining claim on any land open for prospecting and, subject to the other provisions of this Act, may work such claim and transfer his interest therein to another licensee; but, where the surface rights in the land have been granted, sold, leased or located by the Crown, compensation must be made as provided by section 92. R.S.O. 1970, c. 274, s. 36.

LANDS NOT OPEN

Land not
open for
prospecting
without
consent

30. No mining claim shall be staked out or recorded upon any land transferred to or vested in the Ontario Northland Transportation Commission without the consent of the Commission nor, except with the consent of the Minister,

- (a) upon any land reserved or set apart as a town site by the Crown;

- (b) upon any land laid out into town or village lots on a registered plan by the owner thereof;
- (c) upon any land forming the station grounds, switching grounds, yard or right of way of a railway; or
- (d) upon any colonization or other road or road allowance. R.S.O. 1970, c. 274, s. 37.

31. No mining claim shall be staked out or recorded on any land,

Lands upon which claim may not be staked out

- (a) that, without reservation of the minerals, has been sold, located, leased or included in a licence of occupation; or
- (b) for which a *bona fide* application is pending in the Ministry under the *Public Lands Act*, or otherwise, and the applicant may acquire the minerals; or R.S.O. 1980, c. 413
- (c) where the surface rights have been subdivided, surveyed, sold or otherwise disposed of by the Ministry for summer resort purposes, except where the Minister certifies in writing that in his opinion discovery of valuable mineral in place has been made; or
- (d) where the Minister or the Minister of Transportation and Communications certifies that land is required for the development of water power or for a highway or for some other purpose in the public interest and the Minister is satisfied that a discovery of mineral in place has not been made thereon; or
- (e) in an Indian reserve, except as provided by *The Indian Lands Act, 1924*; or 1924, c. 15
- (f) while proceedings in respect thereto are pending before the Supreme Court, the Commissioner or a recorder. R.S.O. 1970, c. 274, s. 38; 1972, c. 1, ss. 1, 100 (2); 1972, c. 4, s. 12.

32. Prospecting or the staking out of mining claims or the development of mineral interests or the working of mines in provincial parks is prohibited except as provided by the regulations made under the *Provincial Parks Act*. R.S.O. 1970, c. 274, s. 39.

Provincial parks

R.S.O. 1980, c. 401

33.—(1) Notwithstanding that the mines or minerals therein have been reserved to the Crown, no person or

Lands used or occupied as gardens, etc.

company shall prospect for minerals or stake out a mining claim upon the part of a lot that is used as a garden, orchard, vineyard, nursery, plantation or pleasure ground, or upon which crops that may be damaged by such prospecting are growing, or on the part of a lot upon which is situated a spring, artificial reservoir, dam or waterworks, or a dwelling house, outhouse, manufactory, public building, church or cemetery, except with the consent of the owner, lessee, purchaser or locatee of the surface rights, or by order of the recorder or the Commissioner, and upon such terms as to him seem just.

Disputes
as to lands
exempt

(2) If a dispute arises between the intending prospector and the owner, lessee, purchaser or locatee as to land that is exempt from prospecting or staking out under subsection (1), the recorder or the Commissioner shall determine the extent of the land that is so exempt. R.S.O. 1970, c. 274, s. 40.

Valuable
water powers
not included
in claim

34. A water power lying within the limits of a mining claim, which at low water mark in its natural condition is capable of producing 150 horsepower or upwards, shall not be deemed to be part of the claim for the use of the licensee, and a road allowance of one chain in width shall be reserved on both sides of the water together with such additional area of land as in the opinion of the recorder or the Commissioner may be necessary for the development and utilization of such water power. R.S.O. 1970, c. 274, s. 41.

Surface
operations
within
150 feet of
highway

35. Where a mining claim adjoins or is adjacent to a highway or road maintained by the Ministry of Transportation and Communications, no surface mining operations shall be carried on within 150 feet of the limits of the highway or road except with the consent in writing of the Minister. R.S.O. 1970, c. 274, s. 42; 1972, c. 1, s. 100 (2).

Withdrawal
and re-
opening of
lands, etc.

36.—(1) The Minister, or an officer appointed under this Act and designated by the Minister, may by an order signed by him,

- (a) withdraw from prospecting and staking out and from sale or lease any lands, mining rights or surface rights that are the property of the Crown; and
- (b) reopen for prospecting and staking out and for sale or lease any lands, mining rights or surface rights that have been withdrawn under this Act.

(2) Where the Minister or the officer makes an order under subsection (1), he shall within twenty-four hours of the date of the order mail a copy of the order to the recorder of the mining division in which the lands, mining rights or surface rights are situate.

Copy of
order sent
to recorder

(3) Upon receipt of the copy of the order, the recorder shall forthwith post up in his office a notice of the order and file the copy of the order in his office.

Filing copy
of order

(4) Lands, mining rights or surface rights withdrawn under this section, until reopened by the Minister or the officer, shall remain withdrawn, and shall not be prospected, staked out, occupied or worked except under subsection (5).

Lands, etc.,
withdrawn
not to be
prospectd
or worked

(5) The Lieutenant Governor in Council may direct that the mines and minerals in lands, mining rights or surface rights, or in any part thereof, withdrawn under this section may be worked by or on behalf of the Crown.

Working on
behalf of
Crown

(6) An order under subsection (1) shall be deemed not to be a regulation within the meaning of the *Regulations Act*. R.S.O. 1970, c. 274, s. 43.

Order not a
regulation
R.S.O. 1980,
c. 446

37.—(1) Every officer appointed or acting under this Act and every assistant of such officer who makes a discovery of valuable mineral upon any lands or mining rights open to prospecting and staking out as a mining claim shall stake out and record a parcel thereof of the size and form of a mining claim on behalf of the Crown, and no licence is required for that purpose.

Duty of
officers of
the Crown
discovering
mineral

(2) No proceeding is necessary for such staking out except to plant posts and blaze lines as provided in respect to a mining claim, but the officer or assistant shall mark upon No. 1 post the words "Staked out for the Crown", and within the time limited by this Act for recording the claim shall notify the recorder of the staking out, giving the date of staking out and the description of the property.

Method

(3) The recorder, upon receiving such notice, shall enter the parcel of land upon his record book as staked out on behalf of the Crown, and shall mark it upon his map with the letter "C", and after such staking out the parcel is not open to staking out or recording. R.S.O. 1970, c. 274, s. 44.

Recording

38. Land or mining rights staked out on behalf of the Crown, and land or mining rights reserved or withdrawn from prospecting, staking out, or sale as mining claims,

Crown may
contract for
working
mining
rights under
agreement

may be worked, sold, leased or granted by the Crown or worked under an agreement or arrangement with the Crown in such manner and upon such terms and conditions and for such price as is provided by the Lieutenant Governor in Council. R.S.O. 1970, c. 274, s. 45.

Permit under
R.S.O. 1980,
c. 173

39. Before beginning or carrying on any work prescribed by this Act on a mining claim, the holder thereof, in addition to any other requirement, shall obtain a written permit entitling him so to do as provided in the *Forest Fires Prevention Act*. R.S.O. 1970, c. 274, s. 47.

SIZE AND FORM OF MINING CLAIMS

Mining
claims in
unsurveyed
territory,
how to be
laid out

40. A mining claim in unsurveyed territory shall be laid out with boundary lines running north and south and east and west astronomically and the measurements thereof shall be horizontal, and in a township surveyed into lots or quarter sections or subdivisions, of a section, a mining claim shall be such part of a lot or quarter section or subdivision of a section as is hereinafter defined, and the boundaries of all mining claims shall extend downwards vertically on all sides. R.S.O. 1970, c. 274, s. 48.

Mining
claims on
agricultural
lands

41.—(1) Where the Minister certifies that land is suitable for disposition for agricultural purposes, a mining claim staked thereon does not give the staker any right, title or interest in or to the surface rights.

Where
surface
rights
necessary
for mining
operations

(2) Where surface rights on any such land are necessary to the carrying on of mining operations, the Minister may determine the part of the surface rights so required and, if not previously disposed of, may sell or award the surface rights or such part thereof to the claim holder as he considers essential to the efficient carrying on of mining operations, and he may require the claim holder to have such surveys made at the expense of the claim holder as he considers proper. R.S.O. 1970, c. 274, s. 49.

Size and
form of
claims, in
unsurveyed
territory

42.—(1) In unsurveyed territory, a mining claim shall be a square of 40 acres, being 20 chains (1,320 ft.) on each side.

in townships
surveyed
into sections
of 640 acres

(2) In a township surveyed into sections of 640 acres subdivided into quarter sections or subdivisions containing 160 acres or thereabouts, a mining claim shall consist of the

northeast quarter, the northwest quarter, the southeast quarter or the southwest quarter of a quarter section or subdivision, and shall contain 40 acres or thereabouts.

(3) In a township surveyed into lots of 320 acres, a mining claim shall consist of the northwest quarter, of the north half, the northeast quarter of the north half, the southwest quarter of the north half, the southeast quarter of the north half of a lot, or any like subdivision of the south half of a lot, and shall contain 40 acres or thereabouts. in townships surveyed into lots of 320 acres

(4) In a township surveyed into lots of 200 acres, a mining claim shall consist of the northeast quarter, the southwest quarter, the northwest quarter or the southeast quarter of a lot, and shall contain 50 acres or thereabouts. in townships surveyed into lots of 200 acres

(5) In a township surveyed into lots of 150 acres, a mining claim shall consist of the northeast quarter, the southeast quarter, the northwest quarter or the southwest quarter of a lot, and shall contain 37½ acres or thereabouts. in townships surveyed into lots of 150 acres

(6) In a township surveyed into lots of 100 acres, a mining claim shall consist of the north half, the south half, the east half or the west half of a lot, and shall contain 50 acres or thereabouts. R.S.O. 1970, c. 274, s. 50. in townships surveyed into lots of 100 acres

43.—(1) In unsurveyed territory, an irregular area of land lying between land not open to be staked out, or bordering on water, may be staked out with boundaries coterminous thereto, but the claim shall be made to conform as nearly as practicable to the prescribed form and area and shall not exceed the prescribed area. Irregular areas in unsurveyed territory, marking boundaries

(2) In a surveyed township where, by reason of land covered with water being excluded from the area of a lot, quarter section of subdivision of a section, or by reason of the lot, quarter section or subdivision being irregular in form, or from any other cause, it is impossible to stake out a mining claim of the prescribed area in accordance with the foregoing provisions of this Act, the mining claim shall as nearly as is practicable be of the prescribed form and area, and shall have such, if any, of its boundaries as can be so made coincident with boundary lines of the lot, quarter section or subdivision of a section, and shall have as many as possible of its boundaries that are not so coincident parallel to boundaries of the lot, quarter section or subdivision which are straight lines, and, where necessary to procure the prescribed area, the mining claim may extend into any part of the lot or quarter section or subdivision of a section, but not into any other lot or quarter section in surveyed townships

or subdivision of a section, and land lying between parcels of land not open to be staked out or between such land and a boundary or boundaries of the lot, quarter section or subdivision of a section may be staked out with boundaries coterminous thereto, but the claim shall be made to conform as nearly as practicable to the prescribed form and area and shall not exceed the prescribed area.

Claims,
including
lands
covered
with water

(3) In unsurveyed territory, land covered with water may be included in a claim in the same way as land not covered with water, and in a surveyed township, land covered with water that would, if not covered with water, have been comprised in the area of the lot, quarter section or subdivision of a section, or have constituted a lot, quarter section or subdivision of a section, may be included in a claim as if it were in fact part of such lot, quarter section or subdivision of a section.

Crown
reservation

(4) Where a claim includes land covered with or bordering on water, there may be reserved for the Crown the surface rights not exceeding 400 feet in width from the high water mark. R.S.O. 1970, c. 274, s. 51 (1-4).

Crown
reservation

(5) Where a claim is traversed by a highway or road constructed or maintained by the Ministry of Transportation and Communications, there may be reserved for the Crown the surface rights not exceeding 300 feet in width along both sides of the highway or road, such reservation to be measured from the outside limits of the right of way of the highway or road. R.S.O. 1970, c. 274, s. 51 (5); 1972, c. 1, s. 100 (2).

Application
of Crown
reservation
to un-
patented
mining
claims

(6) The reservations of surface rights authorized by subsections (4) and (5) shall be deemed to apply to and to have been made on all unpatented mining claims unless such reservation or reservations are waived by the Minister. R.S.O. 1970, c. 274, s. 51 (6).

Rates for
licences of
occupation

44.—(1) Notwithstanding the provisions of a licence of occupation, a minimum annual rental of \$1 an acre but not less than \$5 a year, payable in advance, shall be paid for the licence of occupation.

When annual
rental to be
paid

(2) Where a licence of occupation does not specify a date for the payment of the annual rental, the annual rental shall be paid on the anniversary of the effective date of the licence. 1972, c. 116, s. 11 (1), *part.*

(3) Where payment of the rental under any such licence is in arrears for two years or more, the licence may be terminated by an instrument in writing, and all rights and powers therein contained as well as all rights and claims of the licensee, his successors or assigns, in or to the lands covered by the licence, cease, but the lands or mining rights contained therein are not open for prospecting, staking out, sale or lease under this Act until a date fixed by the Deputy Minister, at least two weeks notice of which shall be published in *The Ontario Gazette*. Termination of licence of occupation

(4) Where there is no adverse interest, the Minister may, upon such terms as he considers just, reinstate a licence terminated under subsection (3). Reinstatement

(5) A licence or the term or terms thereby created is not transferable without the written consent of the Minister or an officer duly authorized by him. R.S.O. 1970, c. 274, s. 52 (4-6). Consent to transfer of licence

(6) The holder of a licence of occupation, upon application in writing therefor and upon the surrender of his licence of occupation, may be issued a lease under section 94 and the rental for each year of the term thereof shall be that prescribed by section 94 for years subsequent to the first year of a term under that section. Lease may be issued under s. 94

(7) This section applies only to a licence of occupation issued under section 52 of *The Mining Act*, being chapter 241 of the Revised Statutes of Ontario, 1960, or any predecessor thereof, and any licence of occupation heretofore issued without a provision for an annual payment. 1972, c. 116, s. 11 (2). Application

45.—(1) Where the Minister considers it in the public interest, he may direct that mining claims in a surveyed township shall be staked and recorded in the same manner as mining claims in unsurveyed territory. Special staking in surveyed townships

(2) Where the Minister considers it inequitable to require compliance with any of the requirements of section 42 or 43 with respect to a mining claim that has been staked and recorded in a surveyed township, he may waive any such requirements. Waiving section 42 or 43

(3) Every survey of a mining claim coming under this section shall indicate and describe the parts of the lots or sections, according to the original survey of the township, included within the limits of such claim, together with the areas thereof. R.S.O. 1970, c. 274, s. 54. Surveys

STAKING OUT CLAIMS

Number of
claims
unlimited

46. A licensee is not limited as to the number of mining claims that may be staked out and applied for in a licence year. R.S.O. 1970, c. 274, s. 55 (1).

Staking out
and planting

47.—(1) A licensee shall stake out a mining claim,

- (a) by planting or erecting a post at each of the four corners of the claim, beginning with and marking that at the northeast corner "No. 1", that at the southeast corner "No. 2", that at the southwest corner "No. 3", and that at the northwest corner "No. 4", so that the number is on the side of the post toward the post next following it in the order named;
- (b) by writing or otherwise inscribing on No. 1 post his name, the letter and number of his licence, the date and hour of the commencement of staking out, and, if the claim is situated in a township surveyed into lots, quarter-sections or subdivisions of a section, the part thereof comprised in the claim, mentioning the lot and concession or the section by number;
- (c) by writing or otherwise inscribing his name and the letter and number of his licence on No. 2, No. 3 and No. 4 posts; and
- (d) by plainly blazing the trees on two sides only where there are standing trees, and cutting the underbrush along the boundary lines of the claim, or where there are not standing trees, clearly indicating the outlines of the claim by planting thereon durable pickets not less than 5 feet in height at intervals of not more than 2 chains (132 feet) or by erecting at such intervals monuments of earth or rock not less than 2 feet in diameter at the base and at least 2 feet high so that the lines may be distinctly seen.

Witness
post

(2) Where at a corner of the claim the nature or conformation of the ground renders the planting or erecting of a post impracticable, the corner may be indicated by planting or erecting at the nearest practicable point a witness post bearing the same marking as that prescribed for the corner post at that corner together with the letters "W.P." and an indication of the direction and distance of the site of the true corner from the witness post.

(3) Every post shall stand not less than four feet above the ground, and shall be squared or faced on four sides for at least one foot from the top, and each side shall measure at least four inches across where squared or faced, but a standing stump or tree may be used as a post if cut off and squared and faced to such height and size, and when the survey is made the centre of the tree or stump where it enters the ground shall be taken as the point to or from which the measurement shall be made.

Mode of
planting,
squaring,
etc., of posts

(4) Every post shall be a post, standing stump or tree not before used as a post for a mining claim.

(5) The following diagrams are intended to illustrate the method of staking out a claim as mentioned in sub-sections (1) and (2):

Illustration
of method
of staking

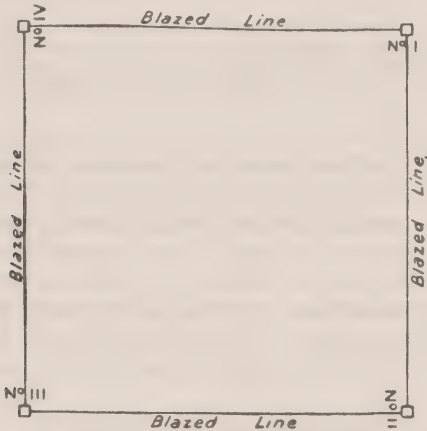


Diagram illustrating s. 47 (1).

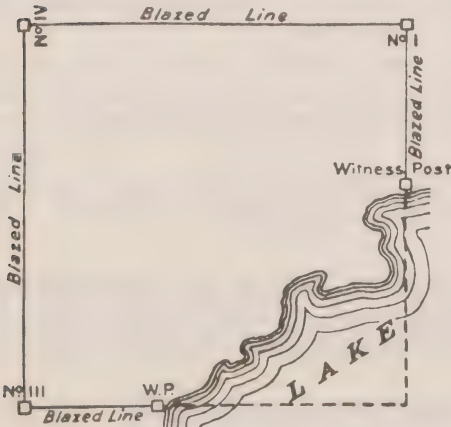


Diagram illustrating s. 47 (2).

Forfeiture
of right
to further
staking

48.—(1) A licensee or other person who for any purpose does any staking out or plants, erects or places any stake, post, or marking upon any land open to prospecting except as authorized by this Act, or causes or procures the same to be done, or who stakes out or partially stakes out any such lands, or causes or procures the same to be done, and fails to record the staking out with the recorder within the prescribed time, is not thereafter entitled to again stake out such lands or any part thereof, or to record a mining claim thereon, unless he notifies the recorder in writing of such staking out, partial staking out, or planting, placing or marking and of his abandonment thereof and satisfies the recorder by affidavit that he acted in good faith and for no improper purpose and procures from him a certificate stating that the recorder is satisfied that he so acted.

Entry

(2) The recorder shall enter every such certificate in his books with the date of its issue. R.S.O. 1970, c. 274, s. 57.

Staking out
claims in
closed fire
region
R.S.O. 1980,
c. 173

49. Where a mining claim is in a fire region and it is staked out during the time that the fire region is closed under the *Forest Fires Prevention Act*, such staking out is invalid and of no effect and the recorder shall not accept an application to record the staking out of the claim unless ordered so to do by the Commissioner upon proof that the person so staking out the claim entered the fire region before it was closed or pursuant to a special authorization of the Minister. R.S.O. 1970, c. 274, s. 58.

Substantial
compliance
with Act
sufficient

50. Substantial compliance as nearly as circumstances will reasonably permit with the requirements of this Act as to the staking out of mining claims is sufficient. R.S.O. 1970, c. 274, s. 59.

APPLICATIONS TO RECORD

Plan and
application
to be
furnished
to recorder

51.—(1) A licensee who has staked out a mining claim shall furnish the recorder with,

(a) a sketch or plan of the mining claim showing the corner posts and the witness posts, if any, and the distance between the posts in feet;

(b) an application in the prescribed form setting forth,

(i) in the case of unsurveyed territory, its locality by such general description and other

information as will enable the recorder to indicate the claim on his office map,

(ii) in the case of a surveyed township, the lot, quarter section or subdivision of a section and the part thereof comprising the claim,

(iii) the day and hour when the claim was staked out,

(iv) the date of the application, and

(v) where metal tags have been affixed to the corner posts under section 55, the letters and numbers on the tags so affixed; and

(c) the prescribed fee.

(2) A licensee shall comply with subsection (1) not later than Time limit for compliance thirty-one days from the date of staking.

(3) The licensee shall submit with his application and sketch or plan a certificate in the prescribed form stating, Certificate to accompany application

(a) that he has staked out the claim in accordance with this Act;

(b) that the distances given in his application and sketch or plan are as accurate as they could reasonably be ascertained;

(c) that all other statements and particulars set forth in the application and shown on the sketch or plan are true and correct;

(d) that at the time of staking there was nothing upon the lands to indicate that they were not open to be staked and that he believes they were so open;

(e) that the staking is valid and should be recorded; and

(f) that there are upon the lands staked no buildings, clearings or improvements for farming or other purposes, except as set forth in the certificate.

(4) The recorder or the Commissioner may, after a Cancellation of recording hearing, cancel the recording of the claim of a licensee who knowingly makes a false statement in his application under subsection (1) or in his certificate under subsection (3).

Misdescription, when not to invalidate claim

(5) Where it appears that there has been an attempt made in good faith to comply with this Act, the inclusion of more or less than the prescribed area in a mining claim or the failure of the licensee to describe or set out in the application, sketch or plan furnished to the recorder the actual area or parcel of land staked out does not invalidate the claim. R.S.O. 1970, c. 274, s. 60.

Endorsement by recorder

52. A licensee at the time of making application to record a mining claim shall produce his licence to the recorder and the recorder shall endorse and sign upon the back of the licence a note in writing of the record of the claim, and no such record is complete or effective until such endorsement is made unless upon application to or in any case coming before the Commissioner he considers it just that compliance with the requirements of this section should be waived. R.S.O. 1970, c. 274, s. 61.

Licensee recording in another division by error

53. If by error a licensee records a mining claim in a division other than that in which the claim is situate, the error does not affect his title to the claim, but he shall within fifteen days from the discovery of the error record the claim in the division in which it is situate, and the new record shall bear the date of the former record, and a note shall be made thereon of the error and of the date of rectification. R.S.O. 1970, c. 274, s. 62.

What to be recorded

54.—(1) The recorder shall forthwith enter in the proper book in his office the particulars of every application to record a mining claim that he considers to be in accordance with this Act, unless a prior application is already recorded and subsisting for the same, or for any substantial part of the same lands or mining rights, and he shall file the application, sketch or plan and affidavit with the records of his office, and every application proper to be recorded shall be deemed to be recorded when it is received in the recorder's office, if all requirements for recording have been complied with, notwithstanding that the application may not have been immediately entered in the record book.

Procedure when refused

(2) If an application is presented that the recorder considers to be not in accordance with this Act or that is for lands or mining rights which or any substantial part of which are included in a subsisting recorded claim, he shall not record the application, but shall, if desired by the applicant, upon receiving the prescribed fee, receive and file the application, and any question involved may be adjudicated as provided in this Act, but such filing

shall not be deemed a dispute of the recorded claim nor shall it be noted or dealt with as such unless a dispute verified by affidavit is filed with the recorder by the applicant or by another licensee on his behalf as provided in section 56.

(3) An application received and filed under subsection (2) is invalid and of no effect sixty days after the receiving and filing unless in the meantime an action is commenced before the recorder or the Commissioner or unless in the meantime the recorder or the Commissioner orders a continuation of the application.

Cancellation
of "filed
only"
applications

(4) As soon as an application is invalid and of no effect under subsection (3), the recorder shall mark the application cancelled and by registered letter shall notify the applicant at his last known address in the recorder's office of his action and the reason therefor.

Notice to
applicant

(5) As soon as is reasonably possible after the recording of the mining claim and not later than six months thereafter, the holder of the claim shall affix or cause to be affixed securely to each of the corresponding corner posts of the claim a metal tag plainly marked or impressed with the recorded number of the claim, and the recorder shall supply such numbered tags free of charge.

Tagging
claim posts
after
recording

(6) Subsection (5) does not apply to mining claims on which the metal tags have been affixed to the corner posts at the time of staking under section 55.

Application
of subs. (5)

(7) Upon receipt of a written report by an inspector or other officer appointed under this Act that the metal tags have not been affixed within the prescribed time or such further time as is authorized by the Commissioner under section 86, or the recorder under section 80, the recorder shall cancel the claim and shall by registered letter mailed not later than the next day notify the holder thereof of his action and the reason therefor.

Cancellation
of claim
where metal
tags not
affixed

(8) Notwithstanding subsection 90 (4), where the metal tags have not been affixed as required by subsection (5), any licensee may stake the claim but the recorder shall not record his application therefor until cancellation has been effected under subsection (7).

Staking out
pending
cancellation

(9) At the time of recording, the recorder shall add to each claim number the prefix allotted to his division and such prefix shall form part of the claim number.

Division
prefix to
form part
of claim
number

R.S.O. 1970, c. 274, s. 63.

Issuing of
claim tags
before
staking

55.—(1) A licensee may purchase from any mining recorder sets of metal tags for the number of mining claims that he is entitled to stake, and the purchase of such tags and the date thereof shall be endorsed by the mining recorder on the licence of the purchaser.

Fees

(2) The fee for metal tags purchased under subsection (1) is \$1 per set, which shall be deducted by the mining recorder from the fee prescribed in item (4) or item (25) of the Schedule of Fees when the licensee presents an application to record a mining claim on which he has used a set of metal tags so purchased.

Affixing
of claim
tags

(3) A licensee purchasing metal tags under this section shall affix the metal tags to the corresponding corner posts at the time of staking out a mining claim and otherwise the staking out and recording shall be in the manner provided in this Act.

Idem

(4) Metal tags purchased under this section shall be used in staking out claims only by the licensee who purchased them and they shall not be used in staking out claims after the expiry of the licence year in which they were purchased and there shall be no refund of the fee paid for any unused metal tags.

Tags may
be used in
any division

(5) Metal tags purchased under this section may be used for staking out mining claims in any mining division.

Affixing of
claim tags
to be stated
in applica-
tion to
record

(6) Where metal tags are affixed to the corner posts at the time of staking as provided in subsection (3), the licensee who stakes out the claim shall so state in his application to record the mining claim.

Cancellation
of claim
where metal
tags not
affixed

(7) Upon receipt of a written report by an inspector or other officer appointed under this Act that the metal tags have not been affixed at the time of staking as required by subsection (3), the recorder shall cancel the claim, and shall by registered letter mailed not later than the next day notify the holder thereof of his action and the reason therefor.

Staking out
pending
application

(8) Notwithstanding subsection 90 (4), where the metal tags have not been affixed as required by subsection (3), any licensee may stake the claim but the recorder shall not record his application until cancellation has been effected under subsection (7).

Licensee
staking out
contiguous
claims may
use common
posts at
common
corners

(9) Where metal tags purchased under this section are used in staking out mining claims and the licensee stakes

out a group of two or more contiguous claims as part of a continuous action and presents the claims to the recorder for recording at the same time, he may plant or erect and use common posts at common corners if,

- (a) the metal tag and the writing pertaining to each claim are placed on that side of the common post facing the next post for that claim in a clockwise manner; and
- (b) the sketch furnished under subsection 51 (1) indicates any common posts so planted or erected,

and otherwise the staking out and recording shall be in the manner provided in this Act. R.S.O. 1970, c. 274, s. 64.

DISPUTING APPLICATIONS

56.—(1) A dispute in the prescribed form, verified by affidavit in the prescribed form, may be filed with the recorder by a licensee alleging that a recorded claim is illegal or invalid in whole or in part and, if the disputant or the licensee in whose behalf he is acting claims to be entitled to be recorded for or to be entitled to any right or interest in the lands or mining rights, or in any part thereof, comprised in the disputed claim, the dispute shall so state, giving particulars, and the recorder shall, upon payment of the prescribed fee, receive and file such dispute, and shall enter a note thereof upon the record of the disputed claim.

(2) A copy of the dispute and affidavit shall be left by the disputant with the recorder who shall not later than the next day after the filing of the dispute transmit the copy by registered mail to the recorded holder or holders of the mining claim affected thereby, and, if the copy is not left, the recorder may refuse to file or note the dispute or may collect from the disputant 10 cents per folio for making the copy.

(3) The dispute shall contain or have endorsed upon it an address in Ontario at which the disputant may be served with any notice or document relating to the dispute, and any such notice or document is sufficiently served upon the disputant if it is left with a grown-up person at such address or, where no such person can there be found, if sent by registered mail addressed to the disputant at such address.

Idem

(4) If no address for service is given as required by subsection (3), any notice or document referred to therein may be served upon the disputant by posting up a copy thereof in the recorder's office.

Not to be
received after
certificate
issued

(5) A dispute shall not be received or entered against a claim after a certificate of record thereof has been granted, nor, except by leave of the Commissioner, after the validity of the claim has been adjudicated upon by the recorder or by the Commissioner, or after it has been on record for sixty days and has already had a dispute entered against it.

Fee includes
fee for filing
order

(6) Where the prescribed fee has been paid for filing a dispute under subsection (1), such fee shall be deemed to include the fee for filing any order or orders settling the dispute. R.S.O. 1970, c. 274, s. 65.

CERTIFICATE OF RECORD

Certificate
of record

57.—(1) Where a claim has been on record for sixty or more days and,

- (a) if no dispute is standing against the claim; and
- (b) if the recorder is satisfied that the requirements of this Act have been met; and
- (c) if the surface rights compensation, if any, has been paid or secured; and
- (d) if the plan of survey is filed and approved where required under section 108 or 109; and
- (e) upon payment of the prescribed fee,

the recorder shall issue a certificate of record in the prescribed form. R.S.O. 1970, c. 274, s. 66 (1).

Idem

(2) Notwithstanding clause (1) (d), where a plan of survey has not been filed, the recorder may issue a certificate of record if he is satisfied that clauses (1) (a), (b), (c) and (e) have been complied with and upon payment of a fee at the rate of \$25 a claim. 1972, c. 116, s. 15.

Certificate
of record
where claim
included in
perimeter
survey

(3) Where a claim forms part of a group of claims that have been included in a perimeter survey as provided in subsection 108 (3), the recorder shall not issue a

certificate of record unless application is made for patent or lease and the price or rental has been paid. R.S.O. 1970, c. 274, s. 66 (2).

58. The certificate of record, in the absence of mistake or fraud, is final and conclusive evidence of the performance of all the requirements of this Act, except working conditions, in respect of the mining claim up to the date of the certificate, and thereafter the mining claim is not, in the absence of mistake or fraud, liable to impeachment or forfeiture except as expressly provided by this Act. R.S.O. 1970, c. 274, s. 67.

Effect of
issue and
delivery of
certificate
of record

59. Where the certificate of record has been issued in mistake or has been obtained by fraud, the Commissioner has power to revoke and cancel it on the application of the Crown or an officer of the Ministry, or of any person interested. R.S.O. 1970, c. 274, s. 68; 1972, c. 1, s. 1.

Cancelling
certificate of
record issued
by mistake,
etc.

RIGHTS OF LICENSEE

60.—(1) The staking out or the filing of an application for or the recording of a mining claim, or all or any of such acts, does not confer upon a licensee any right, title, interest or claim in or to the mining claim other than the right to proceed as in this Act provided to obtain a certificate of record and a patent from the Crown, and prior to the issue of a certificate of record the licensee is merely a licensee of the Crown, and after the issue of the certificate and until he obtains a patent he is a tenant at will of the Crown in respect of the mining claim.

Rights in
claim

(2) The staking out or filing of an application for or the recording of a mining claim, or all or any of such acts, does not confer upon a licensee any right to take, remove, or otherwise dispose of any minerals, sand, gravel, stone or any other material found in, upon or under the mining claim. R.S.O. 1970, c. 274, s. 69 (1, 2).

Idem

(3) The Minister may reserve for the Crown the peat, sand and gravel located on an unpatented mining claim. 1980, c. 83, s. 1.

Reserva-
tions

(4) The reservation authorized by subsection (3) shall be deemed to have been made on all unpatented mining claims unless such reservation is waived by the Minister.

Reservation
may be
waived

(5) The holder of a mining claim does not have any right, title or claim to the surface rights of the claim other than the right to enter upon, use and occupy such

Surface
rights

part or parts thereof as are necessary for the purpose of prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights therein.

Taxation

(6) The holder of an unpatented mining claim is not liable to assessment or taxation for municipal or school purposes in respect of such unpatented mining claim.

Idem

(7) The holder of a licence of occupation or quarry permit issued under this Act or any predecessor thereof is not liable to assessment or taxation for municipal or school purposes in respect of such licence of occupation or quarry permit except with respect to improvements for which he would be liable to assessment or taxation if the lands were held under a patent. R.S.O. 1970, c. 274, s. 69 (4-7).

Surface rights on unpatented mining claim

61.—(1) Except as in this Act otherwise provided, the holder of an unpatented mining claim has the right prior to any subsequent right to the user of the surface rights for prospecting and the efficient exploration, development and operation of the mines, minerals and mining rights.

Disposition of surface rights
R.S.O. 1980,
c. 413

(2) Where the holder of an unpatented mining claim consents to the disposition of surface rights under the *Public Lands Act*, the recorder shall make an entry on the record of the claim respecting the consent, and thereupon the surface rights may be dealt with as provided in the *Public Lands Act*.

Survey of surface rights

(3) Where the holder of an unpatented mining claim consents to the disposition of surface rights under subsection (2), the Minister may require a survey of such surface rights, and the survey shall be provided at the expense of the person who has acquired the surface rights.

Where holder does not consent to disposition of surface rights

(4) Where an application is made for disposition under the *Public Lands Act* of surface rights on an unpatented mining claim and the holder of the unpatented mining claim does not consent to the disposition and provision for the reservation or exclusion of the surface rights is not otherwise provided for in this Act or any other Act, the Minister may refer the application to the Commissioner.

Where application referred to Commissioner

(5) Where an application under subsection (4) is referred to the Commissioner, he shall, upon giving all interested persons at least ninety days notice and after hearing such interested persons as appear, make an order based on the merits of the application.

(6) Where surface rights on an unpatented mining claim are required for the use of the Crown or other public use, this section applies with necessary modifications. R.S.O. 1970, c. 274, s. 70. Where surface rights required for public use

62.—(1) The Minister may permit the mining, milling and refining of ore on an unpatented mining claim for the purpose of testing mineral content and may prescribe the conditions for so doing. Permission to test ore

(2) Permission granted under subsection (1) shall be in writing, shall be for a given period of time and shall cover a given quantity of ore. Conditions

(3) The end product of such mining, milling and refining, except as provided in subsection (4), shall not be sold or otherwise disposed of until the mining claim or mining claims from which the ore was taken are leased or patented under this Act. Sale of ore

(4) The Minister may, in writing, prescribe the disposition of the proceeds from the sale of any end product and may require that the proceeds be held by the Crown until title has been granted for the mining claim or claims or he may direct that the proceeds be escheated to the Crown in whole or in part. R.S.O. 1970, c. 274, s. 71. Disposition of proceeds from sale of ore

63.—(1) Every licensee who stakes out and records a mining claim may obtain from the recorder two free assay coupons on recording it and two additional free assay coupons on recording each forty days work thereafter and on forwarding or delivering, charges prepaid, samples from the mining claim to the Chief Analyst, Geoscience Laboratories, Ministry of Natural Resources, Toronto, together with the required number of coupons, as provided in the regulations, is entitled to have the samples assayed without charge, but in no case is a licensee entitled to more than eighteen free assay coupons in a licence year. R.S.O. 1970, c. 274, s. 72 (1); 1972, c. 4, s. 12, *revised*. Free assays

(2) Every free assay coupon is valid only for a period of two years after the date of its issue. R.S.O. 1970, c. 274, s. 72 (2). Validity of coupons

64.—(1) Where the holder, licensee, lessee or owner of a mining claim, mining lands or mining rights abandons or surrenders the claim, lands or rights or where the mining claim, mining lands or mining rights are cancelled or forfeited under this Act or any other Act or the regulations thereunder, he may take from the claim, lands or rights Where claim, lands or rights abandoned, etc.

any buildings, structures, machinery, chattels, personal property and, except in the case of an unpatented mining claim, any ore or mineral he has extracted therefrom belonging to him and any slimes or tailings not otherwise owned, within six months after the abandonment, surrender, cancellation or forfeiture or within such further time as is fixed by the Commissioner, and, in default of so doing, all such buildings, structures, machinery, chattels, personal property, ore, mineral, slimes and tailings belong to the Crown and may be sold or otherwise disposed of by the Minister upon such terms and conditions as he considers expedient.

Licensee has
no rights in
buildings,
etc.,
acquired
by Crown

(2) The staking or recording of a mining claim does not confer upon the licensee any right respecting buildings, structures, machinery, chattels, personal property, ore, mineral, slimes and tailings acquired by the Crown under subsection (1). R.S.O. 1970, c. 274, s. 73.

Improper
use of
land

65.—(1) Where land is staked out and applied for as a mining claim and it appears that the land is being used other than as mining land or for a purpose other than that of the mineral industry, the Minister may direct the Commissioner to hold a hearing.

Cancellation
of claim

(2) Where, upon notice to all persons interested and after hearing such of them as appear, the Commissioner is satisfied that the land is being used other than as mining land or for a purpose other than that of the mineral industry, he may make an order cancelling the claim, and, on the filing of the order with the recorder for the mining division in which the land is situate, the claim is cancelled and annulled, and the land may be dealt with as provided in this Act. R.S.O. 1970, c. 274, s. 74.

Townsites on
unpatented
claims

66.—(1) Where the Minister recommends the establishment or extension of a townsite on an unpatented mining claim, the Lieutenant Governor in Council may reserve the surface rights on any such claim or parts of any such claim as may be necessary for townsite purposes.

Regulations

(2) The Lieutenant Governor in Council may make such regulations as he considers necessary for the better carrying out of this section. R.S.O. 1970, c. 274, s. 75.

ADDRESS FOR SERVICE

Address
for service
to be on
application
for claim,
etc.

67.—(1) Every application for a mining claim and every other application and every transfer or assignment of a mining claim or of a right or interest acquired under

this Act shall contain or have endorsed thereon the place of residence and post office address of the applicant, transferee or assignee, and also, when he is not resident in Ontario, the name, residence and post office address of a person resident in Ontario upon whom service may be made.

(2) No such application, transfer or assignment shall be filed or recorded unless it conforms with subsection (1). Irregular documents not to be filed

(3) Another person resident in Ontario may be substituted as the person upon whom service may be made by filing, in the office in which such an application, transfer or assignment is filed or recorded, a memorandum setting forth the name, residence and post office address of such other person, and such a substitution may be made from time to time as occasion requires. Substituting new agent for service

(4) Service upon the person named as the person upon whom service may be made, unless another person has been substituted for him under subsection (3) and in case of such substitution upon the person substituted, has the same effect as service upon the person whom he represents. Service upon agent to be sufficient

(5) Subsection (4) applies to every notice, demand or proceeding in any way relating to a mining claim or to mining rights or to any other right or interest that may be acquired under this Act. R.S.O. 1970, c. 274, s. 76. Application of subs. (4)

TRUSTS, AGREEMENTS AND TRANSFERS

68.—(1) Notice of a trust, express, implied or constructive, relating to an unpatented mining claim shall not be entered on the record or be received by a recorder. Claim "in trust"

(2) Describing the holder of the mining claim as a trustee, whether the beneficiary or object of the trust is mentioned or not, does not impose upon any person dealing with such holder the duty of making any inquiry as to his power to deal therewith, but the holder may deal with the claim as if such description had not been inserted. Describing licensee as trustee, etc., effect of

(3) Nothing in this section relieves the holder of the mining claim who is in fact a trustee thereof or of any part or share thereof or interest therein from liability as between himself and any person, mining partnership or company for whom he is a trustee, but such liability continues as if this section had not been enacted, nor shall any provision in this Act relieve the holder from any personal liability or obligation. R.S.O. 1970, c. 274, s. 77. Saving of rights of others

Agreements
and
transfers,
evidence of

69.—(1) No person is entitled to enforce any claim, right or interest, contracted for or acquired before the staking out, to or in or under any staking out or recording of a mining claim or of any mining lands or mining rights done by another person unless the fact that the first-mentioned person is so entitled is made to appear by a writing signed by the holder of the claim or by the licensee by whom the staking out or recording was done or the evidence of the first-mentioned person is corroborated by some other material evidence, and, where a right or interest is so made to appear, the *Statute of Frauds* does not apply.

R.S.O. 1980,
c. 481

Sales or
transfers
after
staking out

(2) No person is entitled to enforce any contract, made after the staking out, for sale or transfer of a mining claim or any mining lands or mining rights, or any interest in or concerning the same, unless the agreement or some note or memorandum thereof is in writing signed by the person against whom it is sought to enforce the contract or by his agent, thereunto by him lawfully authorized. R.S.O. 1970, c. 274, s. 78.

Transfer,
form of

70. A transfer of an unpatented mining claim or of an interest therein may be in the prescribed form and shall be signed by the transferor or by his agent authorized by instrument in writing. R.S.O. 1970, c. 274, s. 79.

RECORDING DOCUMENTS

Recording
instruments

71. Except as in this Act otherwise expressly provided, no transfer or assignment of or agreement or other instrument affecting a mining claim or a recorded right or interest acquired under this Act shall be entered on the record or received by a recorder unless it purports to be signed by the recorded holder of the claim or right or interest affected or by his agent authorized by recorded instrument in writing, nor shall any such instrument be recorded without an affidavit in the prescribed form, attached to or endorsed thereon, made by a subscribing witness to the instrument. R.S.O. 1970, c. 274, s. 80.

Priority

72. After a mining claim or other right or interest acquired under this Act has been recorded, every instrument other than a will affecting the claim or an interest therein is void as against a subsequent purchaser or transferee for valuable consideration without actual notice unless the instrument is recorded before the recording of the instrument under which the subsequent purchaser or transferee claims. R.S.O. 1970, c. 274, s. 81.

73. The recording of an instrument under this Act constitutes notice of the instrument to all persons claiming an interest in the claim subsequent to such recording, notwithstanding any defect in the proof for recording, but nevertheless it is the duty of the recorder not to record except upon the proof required by this Act. R.S.O. 1970, c. 274, s. 82.

Recording
to be notice

74.—(1) Priority of recording prevails unless before the prior recording there has been actual notice of the prior instrument by the party claiming under the prior recording.

Where
actual notice
prevails

(2) Any transfer or other instrument proper to be recorded shall, if all requirements for recording have been met, be deemed to have been recorded at the time that it was received in the office of the recorder, notwithstanding that such transfer or other instrument may not have been immediately entered in the record book.

Transfer,
etc., deemed
to be
recorded
when
received in
office of
recorder

(3) Where a document is required to be filed with or a fee is required to be paid to a recorder and the document or fee is sent by mail and is received in the office of the recorder after the prescribed time, the recorder may accept the document or fee upon evidence that it was mailed within the prescribed time and that there is no adverse interest. R.S.O. 1970, c. 274, s. 83.

Filing
after the
prescribed
time

75.—(1) The recorder shall enter upon the record of any unpatented mining claim or other recorded right or interest a note of any order or decision made by him affecting the same, giving its date and effect and the date of the entry, and he shall, upon receiving with the prescribed fee an order or decision of the Commissioner, or an order, judgment or certificate in an appeal from him, or a certified or sworn copy thereof, file the same and enter a note thereof upon the record of the claim or right or interest affected thereby.

Recording
orders and
judgments

(2) In a proceeding calling in question an interest in an unpatented mining claim or other recorded right or interest, the Commissioner or recorder may issue a certificate in the prescribed form and, upon receipt thereof and payment of the prescribed fee, the recorder shall file and note it as above directed.

Recording
certificate of
lis pendens

(3) The filing of a certificate is actual notice to all persons of the proceeding.

Filing
certificate
to be notice

(4) The certificate and the filing and noting thereof are of no effect for any purpose whatever after the expiration of ten days from the date of filing unless within

Duration of
certificate of
lis pendens

that time an order continuing the certificate is obtained from the Commissioner or the recorder, and any person interested may at any time apply to the Commissioner for an order vacating the certificate.

Notification
of continu-
ance or
vacating of
his pendens

(5) On receipt by the recorder of such order, he shall forthwith transmit by registered mail a copy of the order to every recorded holder of an interest in the mining claim.

Execution
against
claims, etc.

(6) A copy of a writ of execution, certified by the sheriff of the county or district or a bailiff of a small claims court therein to be a true copy of a writ in his hands, may be filed with the recorder, and the recorder, upon receiving the prescribed fee and being given the number or description of the claim, shall enter a note of such execution upon the record of each claim of which the execution debtor is the recorded holder or in which he has a recorded interest, and from and after, but not before, such entry, the execution binds all the right or interest of the execution debtor in the claim, and after such entry the sheriff or bailiff has power to sell and realize upon such right or interest in the same way as goods and chattels may be sold and realized upon under execution, and a transfer from the sheriff or bailiff to the purchaser may, upon the latter becoming, if he is not before, a licensee, be recorded in like manner and with the same effect as a transfer from the execution debtor.

Certified
copy, fee
therefor

(7) Such certified copy of the writ of execution may be obtained from the sheriff or bailiff on payment of a fee of \$1, which fee, together with the fee paid for recording the execution, shall be added to the execution debt.

Keeping
claim in
good stand-
ing after
entry of
execution

(8) After entry of such an execution upon the record of the claim, the sheriff, bailiff or the execution creditor may do anything that the execution debtor could do to keep the claim or interest in or restore it to good standing, and he is entitled to add the necessary expense thereof to the execution debt.

Discharge of
execution

(9) Such an execution may be discharged by recording a certificate from the sheriff or bailiff that it has been satisfied or by recording a release from the execution creditor or by obtaining and filing an order of the Commissioner directing its removal.

Fee for
filing
certificate
includes fee
for filing
order

(10) Where the prescribed fee has been paid for filing a certificate under subsection (2), the fee shall be deemed to include the fee for filing any order or orders made by the Commissioner in the proceeding. R.S.O. 1970, c. 274, s. 84.

WORKING CONDITIONS

76.—(1) The recorded holder of a mining claim shall, within five years immediately following the recording thereof, perform or cause to be performed thereon work consisting of stripping or opening up mines, sinking shafts or other actual mining operations to the extent of 200 days work, which work shall be performed as follows:

Working
conditions
on mining
claims

1. First period of at least twenty days, not later than one year immediately following the recording of the claim.
2. Second period of at least forty days, not later than two years after date of recording.
3. Third period of at least forty days, not later than three years after date of recording.
4. Fourth period of at least forty days, not later than four years after date of recording.
5. Fifth period of at least sixty days, not later than five years after date of recording.

(2) The work may be completed in a less period of time than herein specified and, if more work is performed by or on behalf of the recorded holder than is herein required during the first year or in a subsequent year, the excess, upon proof of the work having been performed, shall be credited by the recorder upon the work required to be done during a subsequent year.

Work done
within earlier
period and
allowance
for excess

(3) The recorded holder of a mining claim shall, not later than ten days after each of the periods specified, make a report in the prescribed form as to the work done or caused to be done by him during such period, verified by certificate in the prescribed form, and the report shall show in detail,

Work
reports

- (a) the location, nature and extent of the work;
- (b) the names and addresses of the men who performed the work; and
- (c) the dates upon which each man worked in 'its performance,

and, in the case of diamond or other core drilling, the report shall be accompanied by a core log in duplicate indicating the footages of the rock types encountered, and

the angle and direction of the drill hole, and by a sketch or plan in duplicate fixing the location of the drill hole in relation to the corner posts of the claim. R.S.O. 1970, c. 274, s. 85 (1-3).

Certificate
of perform-
ance

(4) The recorder, if satisfied that the prescribed work has been duly performed, may grant a certificate in the prescribed form, but he may first, if he considers it proper, inspect or order the inspection of the work or otherwise investigate the question of its sufficiency, and such certificate, in the absence of fraud or mistake, is final and conclusive evidence of the due performance of the work therein certified, but where it has been issued in mistake or obtained by fraud the Commissioner has power to revoke and cancel it upon the application of the Crown or an officer of the Ministry or any person interested. R.S.O. 1970, c. 274, s. 85 (4); 1972, c. 1, s. 1.

Decision
final

(5) The decision of the Commissioner as to the due performance of work is final. R.S.O. 1970, c. 274, s. 85 (5).

Work to be
performed
on claims

(6) A licensee may perform or cause to be performed on one or more unpatented claims any of the work required to be performed in respect of contiguous unpatented claims recorded in his name or of which he is the optionee of record, and the reports of work and the certificates to be filed in respect of the work shall indicate the claim or claims on which the work was performed and the claim or claims upon which it is to be applied, but in no case, except for work required under subsection 94 (17), shall more than 4,000 days work be performed on a claim for application on other claims. R.S.O. 1970, c. 274, s. 85 (6); 1971, c. 102, s. 2.

Grouping of
claims for
filing

(7) A recorded holder or an optionee of record may vary the claims grouped under subsection (6) for successive filings of work but the grouping for each filing must meet the requirements of subsection (6).

Work
applied to
other claims

(8) The total amount of work performed on an unpatented claim and applied on other claims is the work assignment.

When work
assignment
voided

(9) The work assignment charged to a claim is voided when the claim is transferred to another licensee or when an option is filed in favour of another licensee, and the new holder or new optionee is entitled to a full work assignment of not more than 4,000 days work with respect to that claim, provided that the requirements of subsection (6) are met.

(10) If a previous recorded holder again becomes the recorded holder of a claim, the work assignment charged to the claim is the work assignment that was charged to it at the time that he disposed of the claim. Claim reverting to original holder

(11) If an option ceases to have effect by virtue of an entry on the record of a claim, the work assignment charged to the claim is the work assignment that was charged to it at the time that the option was filed. Lapse of option
R.S.O. 1970, c. 274, s. 85 (7-11).

(12) Notwithstanding subsection (6), if the work is diamond drilling and the length of the drill hole is greater than 4,000 feet, the maximum number of days work permitted under that subsection to be performed on a claim for application on other claims is increased by, Increase of work assignment

(a) one and one-half days for each foot of boring that is more than 4,000 feet and not more than 5,000 feet; and

(b) two days for each foot of boring that is more than 5,000 feet. 1972, c. 116, s. 16.

(13) The construction of houses or roads or other like improvements does not constitute "actual mining operations" within the meaning of this section. R.S.O. 1970, c. 274, s. 85 (13). Certain works not regarded

77.—(1) When the plan and field notes of a survey of a mining claim made under section 108 or 109 are filed with the mining recorder within the prescribed time, the survey counts as forty days work on the surveyed claim. Survey to count as work

(2) On receipt of an affidavit by an Ontario land surveyor that he has made a survey of a mining claim within the period during which work is required by this Act to be done on such claim and his undertaking that he will forward or cause to be forwarded to the recorder, not later than two months after the close of the period for doing the work, plans and field notes of the survey, the recorder may enter upon the record of the claim forty days work and he may cancel the entry in default of receipt of the plans and field notes within such period of two months. before plans filed

(3) Where work has been recorded with the mining recorder under subsection (1) or (2) and the survey of the mining claim does not comply with section 108 or 109 or Cancellation of work

the regulations, the Minister may direct the mining recorder to cancel the work and thereupon the mining recorder shall cancel the entry on the record.

Where
s. 76 (6) not
to apply

(4) Subsection 76 (6) does not apply to work recorded under subsection (1) or (2). R.S.O. 1970, c. 274, s. 86 (1-4).

Diamond or
other core
drills

(5) Where the length of the drill hole is more than 25 feet, boring by diamond or other core drill counts as work,

- (a) where the core from the drill is less than $\frac{7}{8}$ of an inch in diameter or the length of the drill hole is 100 feet or less, at the rate of one day's work for each 4 feet of boring; and
- (b) where the core from the drill is $\frac{7}{8}$ of an inch or more in diameter and the length of the drill hole is greater than 100 feet, at the rate of one day's work for each foot of boring,

and, where it is impossible to take core with a core drill through overburden and core is subsequently taken after passage through the overburden, work may be counted as though core was taken for the full length of the drill hole, including the overburden. R.S.O. 1970, c. 274, s. 86 (5); 1972, c. 116, s. 17 (1).

Core
specimens

(6) Where core specimens are submitted with the report and core log for the core drilling referred to in subsection (5), and the core specimens,

- (a) are representative of rock types encountered for the drill hole;
- (b) are not less than 3 inches in length;
- (c) are taken at intervals of not less than 25 feet throughout the length of the hole and are clearly labelled as to the footage; and
- (d) are taken at intervals of less than 25 feet where structural changes in the rock type occur,

each specimen counts as one day's work, but in the case of the specimens referred to in clause (d) the work credit shall not exceed in number of days the total footage of the hole drilled divided by 25. 1971, c. 102, s. 3 (1).

(7) Boring by other than core drill where the length of the bore hole is greater than 200 feet may be counted as work at the rate of one day's work for each 2 feet of boring, Boring by other than core drill

(a) if the recorded holder files logs of the type and in the manner prescribed for core drilling; and

(b) if the bore hole is lengthened by core drilling which is reported to the recorder at the same time as the boring by other than core drill.

(8) Work done by mechanical equipment of a type approved by the Minister counts as work at the rate of one day's work in respect of each man necessarily employed in operating such equipment for each three hours of his employment, but credit shall not be given for more than two operators for each of such equipment without the consent of the Minister, and credit shall not be given for more than twelve hours in any day in respect of any operator. Mechanical equipment

(9) A geophysical survey, satisfactory to the Minister, of a mining claim may be recorded as work on the claim, subject to, Surveys

(a) ground surveys, at the rate of one day's work in respect of each man necessarily employed in line-cutting or chaining for each eight hours of his employment, and at the rate of seven days work in respect of each man necessarily employed in work relating to the geophysical survey for each eight hours of his employment, but no credit shall be given for more than twelve hours in any day in respect of any man; and

(b) airborne geophysical surveys at the rate of forty days work in respect of each mile of continuous recordings,

but not more than a total of eighty days work may be recorded in respect of each claim, and credit for the work shall be cancelled by the recorder unless full reports and plans in duplicate, satisfactory to the Minister, are submitted to the Minister within sixty days of the recording of the work and are approved.

(10) Notwithstanding subsections (9), (11) and (12), but subject to the maximum credits permitted therein, if a ground geophysical or a geological or a geochemical survey meets Credits for performance and coverage

the requirements of the Minister, he may authorize the approval of work credits on the basis of performance and coverage, subject to the limitations prescribed in the requirements, but credit for the work shall be cancelled by the recorder unless full reports and plans in duplicate, satisfactory to the Minister, are submitted to the Minister within sixty days of the recording of the work and are approved.

Geological
survey to
count as
work

(11) A geological survey, satisfactory to the Minister, of a mining claim may be recorded as work on the claim at the rate of one day's work in respect of each man necessarily employed in linecutting or chaining for each eight hours of his employment, and at the rate of seven days work in respect of each man necessarily employed in work relating to the geological survey for each eight hours of his employment, not exceeding a total of forty days work in respect of each claim, but no credit shall be given for more than twelve hours in any day in respect of any man, and credit for the work shall be cancelled by the recorder unless full reports and plans in duplicate, satisfactory to the Minister, are submitted to the Minister within sixty days of the recording of the work and are approved.

Geochemical
survey to
count as
work

(12) A geochemical survey, satisfactory to the Minister, of a mining claim may be recorded as work on the claim at the rate of one day's work in respect of each man necessarily employed in linecutting or chaining for each eight hours of his employment and at the rate of seven days work in respect of each man necessarily employed in work relating to the geochemical survey for each eight hours of his employment, not exceeding a total of forty days work in respect of each claim, but no credit shall be given for more than twelve hours in any day in respect of any man, and credit for the work shall be cancelled by the recorder unless full reports and plans in duplicate, satisfactory to the Minister, are submitted to the Minister within sixty days of the recording of the work and are approved.

Radiometric
surveys

(13) A radiometric survey shall be deemed to be a geophysical survey for the purposes of this section.

Stripping

(14) The actual cost of stripping by other than manual labour may be recorded as work on a mining claim at the rate of one day's work for each \$10 so spent not exceeding 100 days work in respect of each claim, but credit for the work shall be cancelled unless proof of the actual cost is submitted to and accepted by the recorder within thirty days of the recording of the work. R.S.O. 1970, c. 274, s. 86 (7-14).

(15) Subsection 76 (6) does not apply to geological, geochemical and geophysical work, but for the purposes of this Act, in the application to record the work credits for such work performed on two or more claims, the recorded holder of the mining claims shall identify the claims on which the work was performed and the total number of work credits claimed and shall apply to record such number in equal parts to each of the claims and the recorder shall record the work credits accordingly and in no other way.

Certain work
excepted
from s. 76 (6)

(16) In approving work credits applied for under subsection (15), the Minister may apply the approved work credits to the claims in such manner as he determines.

Application
of work
credits by
Minister

1972, c. 116, s. 17 (2).

(17) Shaft sinking, drifting or other lateral work that is at least 10 feet below the surface and the opening of which is at least 5 feet by 7 feet counts as work at the rate of four days work in respect of each man employed in the work for each six hours of the employment, but no credit shall be given for more than twelve hours in any day in respect of any man.

Shaft
sinking,
drifting, etc.

(18) Manual work as prescribed in section 76 and not otherwise provided for in this section counts as work at the rate of one day's work for each six hours of each man's employment, but no credit shall be given for more than twelve hours in any day in respect of any man.

Manual
work

R.S.O. 1970, c. 274, s. 86 (16, 17).

(19) Benefication studies, analyses, assays, microscopic studies and other types of exploration or development work not otherwise provided for in this Act may be counted as work at a rate not exceeding one day's work for each \$15 expended, but not more than sixty days work may be recorded in respect of each claim, and credit for the work shall be cancelled by the recorder unless satisfactory reports, maps and proof of expenditures in duplicate, satisfactory to the Minister, are submitted to the Minister within sixty days of the recording of the work and are approved.

Benefication
studies, etc..
to count
as work

1972, c. 116, s. 17 (3).

(20) Where work submitted under subsection (19) has been paid for with a coupon or coupons obtained under section 63, the expenditure represented shall be calculated according to the schedule of charges of the Geoscience Laboratory of the Ministry of Natural Resources.

Expenditure
where
coupons
used

1971, c. 102, s. 3 (2), *part*; 1972, c. 4, s. 12.

(21) Where the approval of the Minister is required for work credits, approval by him of the amount of work is final.

Work credits

1971, c. 102, s. 3 (2), *part*.

Extensions

(22) Notwithstanding subsections (9), (10), (11), (12) and (19) and section 78, the Minister may allow an extension of the time required to file thereunder reports and plans with the Minister for any time not exceeding sixty days. 1972, c. 116, s. 17 (4).

Airborne
geophysical
certificate

78.—(1) The Minister may issue to the holder of a mining claim or mining claims an airborne geophysical certificate for the mining claim or mining claims, if,

- (a) the claim or claims lie within the area covered by an airborne geophysical survey that was not previously filed with the Ministry and that was conducted prior to the staking of the claim or claims;
- (b) the survey covers an area at least four times the area of the claim or claims;
- (c) full reports and plans in duplicate with respect to the whole area covered by the survey are submitted to the Minister, within six months after the recording of the claim or claims, in the same form and in the same manner as though submitted under subsection 77 (9); and
- (d) the flight lines are not more than one-quarter mile apart and approximately parallel. R.S.O. 1970, c. 274, s. 87 (1); 1972, c. 1, s. 1.

Extension of
time for
performance
of work

(2) Notwithstanding subsection 76 (1), if the claim holder files an airborne geophysical certificate issued under subsection (1) with the recorder of the mining division in which the claim or claims are situate not later than sixty days after the date of issue of the certificate, the recorder shall so indicate on his records, and the time for performing the first and all subsequent periods of work for the claim or claims listed in the certificate shall fall due one year later than the times prescribed in subsection 76 (1). R.S.O. 1970, c. 274, s. 87 (2).

Computing
time for
performance
of work
conditions

79.—(1) In computing the time within which work upon a mining claim is required to be performed,

- (a) all time which by an order in council or regulation is excluded;
- (b) if a permit under the *Forest Fires Prevention Act* that is necessary for the beginning or carrying

on of the work under this Act is refused or the performance of such work is prohibited under that Act, the time during which such refusal or prohibition subsists, if the holder provides the recorder with satisfactory evidence of such prohibition; and

- (c) time during which proceedings concerning the claim are pending, where the Commissioner or recorder is satisfied that any delay in settling the matter is not the fault of the holder,

shall be excluded.

(2) Where time is excluded under subsection (1), the Commissioner may make an order prescribing the date or dates by which the next or any subsequent periods of work shall be performed and reported. R.S.O. 1970, c. 274, s. 88. Order by Commissioner

80.—(1) If by reason of pending proceedings or incapacity from illness of the holder of a mining claim the work is not performed or the metal tags have not been affixed or the money required for patent or lease is not paid within the prescribed time, the recorder may extend the time for the performance of the work or the affixing of the metal tags or the payment of the money for periods not exceeding six months. Extension of time for work

(2) Where the work has not been performed or the metal tags have not been affixed or payment for patent or lease has not been made because of the incapacity from illness of the holder of the claim, the recorder may extend the time only upon the production and filing with him of a certificate of a legally qualified medical practitioner indicating that the holder has by reason of illness been rendered incapable of performing the work or affixing the metal tags or paying the money. Medical certificate

(3) Work performed within any such extended period shall be deemed to have been duly performed under section 76. R.S.O. 1970, c. 274, s. 89. Work done during extension

81. Where two or more persons are the holders of an unpatented mining claim, each of them shall contribute proportionately to his interest, or as they otherwise agree between themselves, to the work required to be done thereon or to a survey, patent or the first year's rental of a lease, and, in case of default by any holder, the Proportionate contribution by co-owners

Commissioner, upon the application of any other holder and upon notice to and after hearing all persons interested or such of them as appear, may make an order vesting the interest of the defaulter in the other co-owners or in any of them upon such terms and conditions and in such proportions as he considers just. R.S.O. 1970, c. 274, s. 90.

Charge
of person
doing work
on mining
claim

82. Where the holder of an interest in a mining claim has made default in payment for work performed thereon by a person not the holder of an interest in the mining claim, the Commissioner, upon the application of such person and upon notice to and after hearing all persons interested or such of them as appear, may make an order vesting the interest in the mining claim of the holder in default, or any part of such interest, in the applicant. R.S.O. 1970, c. 274, s. 91.

ABANDONMENT

Right of
licensee to
abandon

83.—(1) A licensee may abandon a mining claim at any time by giving notice in writing in the prescribed form to the recorder of his intention so to do.

Entry of
note of
abandonment

(2) The recorder shall enter a note of the abandonment upon the record of the claim with the date of the receipt of the notice and shall forthwith post up in his office a notice of the abandonment, marked with the date of the posting up thereof, and thereupon all interest of the licensee in the claim ceases and determines, and the claim is, on and after, but not before, the eleventh day after such posting up, inclusive of the day of posting up, open for prospecting and staking out. R.S.O. 1970, c. 274, s. 92.

Effect
of non-
compliance
with Act or
direction of
recorder as
to abandon-
ment

84. Non-compliance by the licensee with any requirement of this Act as to the time or manner of the staking out and recording of a mining claim or with a direction of the recorder in regard thereto, within the time limited therefor, shall be deemed to be an abandonment, and the claim shall, without any declaration, entry or act on the part of the Crown or by any officer, unless otherwise ordered by the Commissioner, be forthwith opened to prospecting and staking out. R.S.O. 1970, c. 274, s. 93.

FORFEITURE

Forfeiture
of mining
claim

85.—(1) Except as provided by section 86, all the interest of the holder of a mining claim before its patent has issued ceases without any declaration, entry or act

on the part of the Crown or by any officer, and the claim is open for prospecting and staking out,

- (a) if the licence of the holder has expired and has not been renewed;
- (b) if, without the consent in writing of the recorder or Commissioner, or for any purpose of fraud or deception or other improper purpose the holder removes or causes or procures to be removed any stake or post forming part of the staking out of such mining claim, or for any such purpose changes or effaces or causes to be changed or effaced any writing or marking upon any such stake or post;
- (c) if the prescribed work is not duly performed;
- (d) if any report under subsection 76 (3) is not made and deposited with the recorder as therein required;
- (e) if the application and payment for the lease required by section 94 are not made within the prescribed time. R.S.O. 1970, c. 274, s. 94 (1).

(2) No person, other than the Minister or an officer of the Ministry or a licensee interested in the property affected, is entitled to raise any question of forfeiture except by leave of the Commissioner, and proceedings raising questions of forfeiture shall not be deemed to be or be entered as disputes under section 56. R.S.O. 1970, c. 274, s. 94 (2); 1972, c. 1, s. 1. Proceedings
as to
forfeiture

86.—(1) Where forfeiture or loss of rights occurs under subsection 54 (7) or subsection 85 (1) and, Relief
against
forfeiture

- (a) where the licence of the claim holder has expired, the Commissioner may make an order upon such terms as he considers just relieving the claim from forfeiture and authorizing a special renewal of the licence on payment of twice the prescribed fee, except as provided under subsection 22 (5); or
- (b) where the prescribed work is not performed within the time stipulated in subsection 76 (1), the Commissioner, within six months of the forfeiture, may make an order or orders upon such terms as he considers just relieving the claim from forfeiture and extending the time for performing the work; or

- (c) where the report of work is not filed within the time prescribed in subsection 76 (3), the Commissioner, within six months of the forfeiture, may make an order upon such terms as he considers just relieving the claim from forfeiture and authorizing the filing of a proper report of work; or
- (d) where application and payment for the lease are not made within the time prescribed in subsection 94 (2), the Commissioner, within six months of the forfeiture, may make an order, upon such terms as he considers just, relieving the claim from forfeiture and extending the time for applying and paying for the lease, but in no case shall the time for so doing be extended beyond five years of the time prescribed in subsection 94 (2); or
- (e) where the metal tags have not been affixed to the corner posts of the claim within the time prescribed in subsection 54 (5), the Commissioner may make an order, upon such terms as he considers just, relieving the claim from forfeiture and granting an extension of the time for affixing the metal tags to the corner posts, but only one such extension shall be granted, and, where the Commissioner extends the time for affixing metal tags beyond the first anniversary of the date of recording of the claim, the holder of the claim shall pay to the recorder, in addition to the fee prescribed in the Schedule, a fee of \$5 a claim for each year or part of a year of the extension beyond the anniversary date. R.S.O. 1970, c. 274, s. 95 (1); 1971, c. 102, s. 4 (1).

Extension
of time

(2) If application is made to the Commissioner within thirty days before the time forfeiture or loss of rights would occur, he may make an order or orders granting an extension of time in respect of one or both of the following:

1. For affixing the metal tag to the corner posts of the claim.
2. For performing any work required to be performed.

Tags under
section 55

(3) Paragraph 1 of subsection (2) does not apply to metal tags required to have been affixed under section 55.

(4) Within thirty days before forfeiture or loss of rights ^{Idem} would occur, the Commissioner may make an order extending the time for applying and paying for the lease, but in no case shall the time for so doing be extended beyond five years of the time prescribed in subsection 94 (2).

(5) Where the Commissioner extends the time for per- ^{Filing of report} forming work, the report of its performance shall be filed within such extended time.

(6) Where forfeiture or loss of rights has occurred, the ^{Restaking} lands, mining rights or mining claims concerned are not open for staking until 7 o'clock in the forenoon of the day immediately following that upon which forfeiture or loss of rights occurred.

(7) No order made by the Commissioner under this section comes into effect until it is filed in the office of the mining recorder for the mining division in which the claims are situate and until the prescribed fees are paid. ^{Filing of orders}

(8) The recorder, upon a forfeiture or abandonment of or ^{Cancellation of record} loss of rights in a mining claim, shall forthwith enter a note thereof, with the date of entry, upon the record of the claim and mark the record of the claim "Cancelled", and shall post up forthwith in his office a notice of cancellation.

(9) Notwithstanding subsection (7), an order made by the Commissioner under clause (1) (a) may be filed in the office of any recorder, but such order does not come into force until it is so filed and until the prescribed fees are paid. R.S.O. 1970, c. 274, s. 95 (2-9). ^{Filing of relief from forfeiture order}

(10) Where the licence of the claim holder has expired and there is no adverse interest, a recorder may, within three months of the expiry, make an order relieving the claim from forfeiture and authorizing special renewal of the licence on payment of twice the prescribed fee, and such order has the same effect as though issued under clause (1) (a). R.S.O. 1970, c. 274, s. 95 (11). ^{Relief against forfeiture}

87. Where the interest of a joint holder has ceased by reason of the expiration of his licence, such interest, if the Commissioner so directs, passes to and vests in the ^{Interest of joint holder on expiry of his licence}

other holders in proportion to their interests in the claim. R.S.O. 1970, c. 274, s. 96.

Death of
licensee
or holder

88. Where a licensee in whose name a mining claim has been staked out dies before the claim is recorded or where the holder of a claim dies before issue of the patent or lease for the claim, no other person is, without leave of the Commissioner, entitled to stake out or record a mining claim upon any part of the same lands or to acquire any right, privilege or interest in respect thereof within twelve months after the death of such licensee or holder, and the Commissioner may at any time make such order as he considers just for vesting the claim in the representative of such holder and extending the time for performing the work and applying for patent or lease, notwithstanding any lapse, abandonment, cancellation, forfeiture or loss of rights under any provision of this Act. R.S.O. 1970, c. 274, s. 97.

INSPECTION OF CLAIMS

Inspection
by Commis-
sioner,
recorder or
inspector

89.—(1) The Commissioner or the recorder may inspect or order an inspection of, and an inspector or other officer appointed by the Minister may inspect, a mining claim at any time with or without notice to the holder for the purpose of ascertaining whether this Act has been complied with, but after the granting of the certificate of record no such inspection shall, except by order of the Commissioner, be made for the purpose of ascertaining whether the claim has been staked out in the prescribed manner.

Application
for re-
inspection

(2) Unless notice of the inspection has been given to the holder of the claim at least seven clear days prior thereto, either personally or by registered mail addressed to him at his address appearing on record in the recorder's books, he may apply to the Commissioner or to the recorder for a reinspection and it shall be granted if it appears that the holder of the claim has been prejudiced by the want of notice and every such application for reinspection shall be made to the Commissioner or to the recorder within fifteen days of the entry of the decision on the books of the recorder or within such further period not exceeding fifteen days as the Commissioner allows.

View or
inspection
in disputes,
appeals, etc.

(3) The Commissioner or recorder may in any dispute, appeal or other proceeding before him make or order, with or without notice, a view or inspection of any mining claim or of any lands or other property. R.S.O. 1970, c. 274, s. 98.

90.—(1) A report of each inspection, except when made merely for the purpose of a dispute, appeal or other proceeding, shall be made in writing by the inspecting officer and shall be filed in the office of the recorder, who shall forthwith enter upon the record of the claim a note stating the effect of the report and the date of the entry.

Filing and
entry of
report of
inspection

(2) If the recorder is of opinion that upon the report the claim should be cancelled, he shall mark the record of the claim "Cancelled" and affix his signature or initials and shall by registered letter mailed not later than the next day notify the holder of the claim and the disputant and other interested parties, if any, of the receipt and effect of the report, and where the claim is cancelled in consequence of the report, the notice shall so state. R.S.O. 1970, c. 274, s. 99 (1, 2).

Cancelling
claim upon
report

(3) An appeal from the cancellation of the claim may be taken to the Commissioner by the holder of the claim or by the disputant or other interested party, within the time and in the manner provided by section 133. R.S.O. 1970, c. 274, s. 99 (3); 1971, c. 50, s. 58 (4).

Appeal from
cancellation

(4) Upon the cancellation of a claim under this section, the recorder shall forthwith post up in his office a notice of the cancellation, and the land or mining rights comprised in such claim are thereupon, unless withdrawn from prospecting and staking out, again open to prospecting and staking out, but such staking out is subject to the result of an appeal by a licensee whose claim has been cancelled. R.S.O. 1970, c. 274, s. 99 (4).

Effect of
cancellation

91. The holder of a mining claim or the disputant or other person interested is entitled on payment of the prescribed fee to receive from the recorder a certified copy of any report of inspection of the claim filed with him. R.S.O. 1970, c. 274, s. 100.

Right of
holder to
copy of
report

SURFACE RIGHTS COMPENSATION

92.—(1) Where the surface rights of land have been granted, sold, leased or located with reservation of mines, minerals or mining rights to the Crown, or where land is occupied by a person who has made improvements thereon that in the opinion of the Minister entitles him to compensation, a licensee who prospects for mineral or stakes out a mining claim or an area of land for a boring permit or carries on mining operations upon such land shall compensate the owner, lessee, locatee or occupant

Right of
owner of
surface
rights to
compensation

for all injury or damage that is or may be caused to the surface rights by such prospecting, staking out or operations, and in default of agreement the amount and the manner and time of payment of compensation shall be determined by the Commissioner after a hearing, and, subject to appeal to the Divisional Court where the amount awarded exceeds \$1,000, his order is final. 1971, c. 50, s. 58 (5).

Prohibiting
work pending
settlement

(2) The Commissioner may order the giving of security for payment of the compensation and may prohibit, pending the determination of the proceeding or until the compensation is paid or secured, further prospecting, staking out or working by such licensee or any person claiming under him.

Other
licensees not
to prospect,
etc., pending
proceedings

(3) Where an order is made prohibiting the prospecting, staking out or working of a mining claim under subsection (2), no other licensee has the right to prospect or stake out a mining claim to the prejudice of the prohibited licensee while the proceeding is pending.

Lien for
compensation

(4) The compensation is a special lien upon any mining claim or other right or interest acquired by the licensee or any person claiming under him in the land so prospected, staked out or worked, and no further prospecting, staking out or working, except by leave of the Commissioner, shall be done by the licensee or any person claiming under him after the time fixed for the payment or securing of the compensation unless the compensation has been paid or secured as directed. R.S.O. 1970, c. 274, s. 101 (2-4).

Reduction in
area of claim

93.—(1) The Commissioner or the recorder may reduce the area of a mining claim staked out where the surface rights have been granted, sold, leased or located, if in his opinion an area less than the prescribed area is sufficient for working the mines and minerals therein.

Exclusion
of part of
surface rights

(2) The Commissioner or the recorder may exclude from any mining claim such part of the surface rights as may be necessary for the occupation and utilization of buildings or improvements erected or made thereon prior to the time the claim was staked out. R.S.O. 1970, c. 274, s. 102.

ISSUE OF PATENT OR LEASE FOR MINING CLAIM

Right to
lease of
claim

94.—(1) Upon compliance with this Act and upon payment of the rent for the first year, the holder of a mining claim is entitled to a lease of the claim.

(2) The application and payment for a lease shall be made to the recorder within one year from the date upon which all work on a mining claim is required to be performed, and the application shall be accompanied by a certificate of record as provided in section 57 and a certificate of the complete performance of working conditions as provided in subsection 76 (4). Application for lease

(3) A lease under this section shall be for a term of twenty-one years at a rental payable in advance of \$1 an acre for the first year and 25 cents an acre for each subsequent year, the minimum rental being \$10 for the first year and \$5 for each subsequent year. Term of lease

(4) The holder of a mining claim may elect to apply for a lease of the mining rights only. Lease of mining rights

(5) Where a lease under this section is for the mining rights only, the rental is \$1 an acre for the first year and 10 cents an acre for each subsequent year, the minimum rental being \$10 for the first year and \$4 for each subsequent year. Rental

(6) Where the surface rights on part of a claim are excluded in a lease under this section, the rental prescribed in subsection (3) applies to the part of the claim including the surface rights, and the rental prescribed in subsection (5) applies to the part of the claim excluding the surface rights, but the total rental shall not be less than the minimum rental prescribed in subsection (3). Rental where surface rights on part of claim excluded

(7) Subject to subsections (9), (10) and (11), every lease under this section may be renewed for further terms of twenty-one years, and the renewal shall be dated from the day following the expiration of the lease or the last renewal thereof, but application for renewal shall be made within ninety days of the expiry of the lease or last renewal thereof or within such further period as the Minister, in the circumstances of the case, considers proper. Lease renewable

(8) The annual rental for a renewal lease, payable in advance, is \$1 an acre for both surface and mining rights and 50 cents an acre for mining rights only, but the minimum annual rental shall be \$10. Rental for renewal of lease

(9) The Minister may refuse to renew a lease issued under this section or may require the applicant to show cause why a renewal should be granted. Minister may refuse to renew lease

Application
referred to
Commissioner

(10) The Minister may refer an application for renewal of a lease to the Commissioner, who shall, upon notice to all interested persons and after hearing such of them as appear, report to the Minister thereon with his recommendations.

Termination
of lease
for arrears
of rent

(11) Where payment of the rental under any such lease is in arrears for two years or more, the lease may be terminated by an instrument in writing.

Notice of
termination
of lease

(12) Where application for renewal of a lease is not made within the time prescribed by subsection (7) or where a renewal of a lease is refused under subsection (9) or where a lease has been terminated under subsection (11), the Minister may cause a notice of termination to be registered in the proper land registry office, and the land registrar shall, upon receipt of the notice, duly register it, and thereupon all the interests of the lessee, his heirs, executors, administrators and assigns shall be deemed to have ceased and determined, and the lands included in such lease are revested in the Crown freed and discharged from every claim.

Registration
of notice of
termination
R.S.O. 1980,
c. 230, 445

(13) Upon registration of the notice in the proper land registry office, the *Land Titles Act* or the *Registry Act*, as the case may be, ceases to apply to the lands, and the land registrar shall note that fact in his register in red ink. R.S.O. 1970, c. 274, s. 104 (1-13).

Lands vested
in Crown on
termination
of lease

(14) When a lease is terminated under this section, the lease and all rights and powers therein contained, as well as all rights and claims of the lessee, his heirs, executors, administrators or assigns in or to the lands covered by the lease, cease, and such lands are vested in the Crown, freed and discharged from every claim and are not open for prospecting, staking out, sale or lease under this Act until a date fixed by the Deputy Minister, two weeks notice of which shall be published in *The Ontario Gazette*. R.S.O. 1970, c. 274, s. 104 (14); 1972, c. 116, s. 19.

Transfer of
lease or
renewal

(15) A lease or renewal thereof or the term or terms thereby created is not transferable without the written consent of the Minister or an officer duly authorized by him.

Disposition
of surface
rights
reserved in
a lease or
renewal
R.S.O. 1980,
c. 413

(16) Any surface rights reserved in a lease or renewal thereof may be dealt with under Part VII or under the *Public Lands Act* or the regulations made thereunder.

(17) Where the area of the mining claim exceeds by more than five acres the area prescribed for a mining claim in section 42 and the claim is not reduced in size under section 110, the rental per acre of the area in excess of the area so prescribed is twice the rental provided for in this Act, and there shall be performed at least five days work per acre for the excess area.

Rental where area of mining claim exceeds prescribed area

(18) Where there is a group of contiguous claims held by the same licensee and their average area does not exceed by more than five acres the area prescribed for a mining claim in section 42, the Minister may direct that subsection (17) does not apply.

Contiguous claims held by the same licensee

(19) Subsection (17) of this section and subsection 108 (6) do not apply to the rental for renewal leases.

Exceptions

(20) Where additional work is required under subsection (17), the Minister may prescribe the time within which such work is to be performed and recorded, and application and payment for lease shall be made within the time so prescribed. R.S.O. 1970, c. 274, s. 104 (15-20).

Where additional work is required

95.—(1) In this section, “lease” means a lease of surface and mining rights or of mining rights issued under section 47, 52 or 100 of *The Mining Act*, being chapter 241 of the Revised Statutes of Ontario, 1960, or a predecessor thereof, and includes a renewal of such a lease.

Interpretation

(2) Subject to subsection (3), notwithstanding the provisions of a lease, the annual rental for a lease is \$1 an acre, but the minimum annual rental shall be \$10 and shall be payable in advance.

Rate

(3) Subsection (2) does not affect the rental payable under a lease for the balance of the term in effect on the 30th day of June, 1972.

Application

(4) A lease is renewable in perpetuity for periods of ten years and every renewal shall date from the day following the expiry of the lease if application therefor is made within ninety days of the expiration of the lease or within such further period as the Minister, in the circumstances of the case, considers proper.

Renewal of lease

(5) Where payment of the rental under a lease is in arrears for two years or more, the lease may be terminated by an instrument in writing.

Termination of lease for arrears of rent

Notice of
termination
of lease

(6) Where a lease has not been renewed under subsection (4) or has been terminated under subsection (5), the Minister may cause a notice of termination to be registered in the proper land registry office, and the land registrar shall, upon receipt of the notice, duly register it, and thereupon all the interests of the lessee, his heirs, executors, administrators, successors and assigns shall be deemed to have ceased and determined, and the land included in such lease is revested in the Crown, freed and discharged from every claim.

R.S.O. 1980,
cc. 230, 445
not to
apply to
forfeited
lands

(7) Upon registration of the notice under subsection (5) in the land registry office, the *Land Titles Act* or the *Registry Act*, as the case may be, ceases to apply to the lands, and the land registrar shall note that fact in his register in red ink.

Lands
vested in
Crown on
termination
of lease

(8) When a lease is terminated under this section, the lease and all rights and powers therein contained, as well as all rights and claims of the lessee, his heirs, executors, administrators or assigns in or to the lands covered by the lease, cease, and such lands are vested in the Crown, freed and discharged from every claim and are not open for prospecting, staking out, sale or lease under this Act until a date fixed by the Deputy Minister, two weeks notice of which shall be published in *The Ontario Gazette*.

Lessee may
be issued
lease under
s. 94

(9) The holder of a lease, upon application in writing therefor and upon the surrender of his lease, may be issued a lease under section 94 for a term of twenty-one years, and the rental for each year of the term thereof shall be that prescribed by section 94 for years subsequent to the first year of a term under that section. 1972, c. 116, s. 20.

Right to
patent

96.—(1) Subject to subsection (3), where a holder of a lease issued under section 94 produces evidence, satisfactory to the Minister, that he is producing mineral in substantial quantities and production has been continuous for more than one year, he is entitled, upon application in writing therefor and upon the surrender of his lease, to a patent of the lands or mining rights held under lease.

Application
for patent

(2) Application for a patent shall be in the prescribed form and shall be accompanied by the purchase price at the rate of \$10 an acre for both surface and mining rights or \$5 an acre for the mining rights only, as the case may be.

Lease of
land under
navigable
water

(3) Where land consists of land under navigable water, a patent shall not be granted, but, upon application

therefor in writing and upon the surrender of his lease, the lessee is entitled to a new lease renewable in perpetuity for periods of twenty-one years, and every renewal shall date from the day following the expiration of the lease or last renewal thereof if application therefor is made within ninety days of the expiration of the lease or the last renewal thereof or within such further period as the Minister, in the circumstances of the case, considers proper.

(4) The rental for a lease or renewal lease under sub-^{Rental} section (3) shall be as prescribed in subsection 94 (8).

(5) Subsections 94 (11), (12), (13), (14) and (15) apply with ^{Application} necessary modifications to leases and renewals thereof under this ^{of s. 94} section. R.S.O. 1970, c. 274, s. 105.

97.—(1) Where the lessee or owner of mining rights, ^{Lease of} or the holder of a mining licence of occupation, requires ^{surface} the use of surface rights lying within or outside the limits of lands for which he has a lease, patent or licence of occupation for the mining rights for the disposal of tailings or waste material or for the erection of a shaft or buildings for mining or mining purposes, or for any other purpose essential to mining or mining exploration, the Minister may lease to him any available surface rights.

(2) Application for a lease of surface rights shall be ^{Application} made in writing to the Minister in the prescribed form, ^{for lease of} and the applicant shall furnish such particulars as the ^{surface} Minister requires, including ^{rights}

- (a) a statement of the particular purposes for which the surface rights are to be used;
- (b) an adequate description and plan or sketch of the area applied for;
- (c) the first year's rental; and
- (d) proof of ownership, or, in the case of a licence of occupation, proof that the applicant is the holder of the licence of occupation, of the mining lands or mining rights that are the basis of the application.

(3) The Minister may require the applicant to furnish a ^{Survey} survey by an Ontario land surveyor, and the cost of the survey shall be borne by the applicant.

Rental (4) The annual rental of a lease or renewal under this section is \$1 an acre, payable in advance.

Term of lease (5) A lease issued under this section shall be for a term of twenty-one years, but, where the mining lands or mining rights that are the basis of the application are held under a mining lease, the term shall be conterminous with the mining lease. R.S.O. 1970, c. 274, s. 106 (1-5).

Application of s. 94 (7, 9-15) (6) Subsections 94 (7), (9), (10), (11), (12), (13), (14) and (15) apply with necessary modifications to leases issued under this section, but, where the mining lands or mining rights that are the basis of the application are held under a mining lease, the renewal term shall be conterminous with the mining lease. R.S.O. 1970, c. 274, s. 106 (6); 1972, c. 116, s. 21.

Termination of lease where lands forfeited (7) Where the mining lands or mining rights that are the basis for a lease issued under this section are reverted in or are forfeited or revert to the Crown, the lease is forfeited, and subsections 94 (12), (13) and (14) apply.

Holder of lease and holder of land to be same person (8) Where the holder of a lease issued under this section ceases to be the holder of the lands or mining rights in respect of which the lease was issued, the lease is forfeited, and subsections 94 (12), (13) and (14) apply. R.S.O. 1970, c. 274, s. 106 (7, 8).

Lease void where lands used other than for mining industry **98.** The lands, surface rights or mining rights held under a lease that has been or will be issued under this Act shall be used solely for the purposes of the mining industry, and, in default thereof and on the recommendation of the Commissioner, the Lieutenant Governor in Council may declare the lease void, and subsections 94 (12), (13) and (14) apply. R.S.O. 1970, c. 274, s. 107.

Reservations, etc., in leases **99.—**(1) Every lease issued under this Act shall contain the following reservations or provisions:

Reservation for roads 1. Provided that nothing whatsoever herein contained shall prevent or interfere with the free user of any public or travelled road or highway crossing the hereinbefore described premises.

Reservation for power, petroleum, etc. 2. Reserving unto Us, Our Heirs and Successors such use of the land hereby demised for all such works as may be necessary for the development of water power and the development, transmission and distribution of electrical power, natural gas, petroleum

and petroleum products, including the construction, maintenance and operation of roads, railroads, transmission lines and stations, flumes, pipelines, dams, power houses and other works and structures without any liability by Us to the Lessee.

3. Reserving the right to grant without compensation Reservation for railways to any person or corporation the right-of-way necessary for the construction and operation of one or more railways over or across the lands herein leased without let or hindrance from the Lessee where such railway or railways shall not manifestly or materially interfere with the mining operations carried on upon the said premises.
 4. Saving, Excepting and Reserving unto Us, Our Heirs and Successors the free use, passage and enjoyment of, in, over and upon all navigable waters which shall or may hereafter be found on or under or to be flowing through or upon any part of the said parcel or tract of land hereby demised as aforesaid and reserving also right of access to the shores of all rivers, streams and lakes for all vessels, boats and persons, together with the right to use so much of the banks thereof not exceeding one chain in depth from the high-water mark as may be necessary for fishery or public purposes. Reservation for navigable waters
- Provided that, should the premises herein described or any part thereof be covered by navigable waters, this lease shall be subject to the provisions of the *Navigable Waters Protection Act* (Canada), the *Beds of Navigable Waters Act* and the *Lakes and Rivers Improvement Act*. R.S.C. 1970, c. N-19
R.S.O. 1980, cc. 40, 229
5. Provided that nothing herein contained shall in any manner restrict fishing or fishing rights in any navigable waters covering the premises hereby demised and that the said Lessee shall not do any act resulting in damage to fishing or the fishing industry in the said waters or to nets or other appliances used in fishing in such waters. Reservation for fishing
 6. Provided that these presents shall not vest in the Lessee any right, claim or title to the land under navigable waters which may be included within the limits of the herein described premises, but the Reservation for land under navigable waters

Lessee shall have the exclusive right to extract the minerals therefrom during the term of these presents.

Where item 2
of subs. (1)
does not apply

(2) Item 2 of subsection (1) does not apply to a lease of the mining rights only.

Other
reservations

(3) The Minister may direct the inclusion of other reservations or provisions provided for in this Act or not inconsistent with the intent of this Act.

Omission
of reserva-
tions, etc.

(4) The Minister may omit reservations or provisions contained in subsection (1) from a lease issued under section 97 where such reservations or provisions are contrary to the purpose of the lease. R.S.O. 1970, c. 274, s. 108.

Reservation
for roads

100.—(1) Every patent or lease issued under this Act shall contain a reservation for road purposes of 10 per cent of the surface rights of the land granted or leased, as the case may be, and the Crown or its officers or agents may lay out and construct roads where considered proper on the lands so granted or leased.

Reservation
of surface
rights

(2) Every patent or lease issued under this Act shall contain a reservation of the surface rights on and over any public or colonization road or any highway crossing the land granted or leased at the date of issue of the patent or lease.

Subss. (1), (2),
not to apply
to mining
rights

(3) Subsections (1) and (2) do not apply to patents or leases of the mining rights only.

Reservation
of land
to read as
reservation
of surface
rights

(4) Where a patent or lease has been issued under this Act or any predecessor thereof containing a reservation for road purposes of 5 per cent or of 10 per cent of the lands granted, and the Crown or its officers or agents did not occupy lands under such reservation, prior to the 1st day of May, 1963, for laying out and constructing roads, such reservation shall now read as a reservation of 5 per cent of the surface rights or 10 per cent of the surface rights, as the case may be. R.S.O. 1970, c. 274, s. 109.

Form
of patent

101. Every patent of Crown lands or mining rights by which it is intended to vest in the patentee the mines and minerals therein or a part thereof or any rights in connection therewith shall state that it was issued under this Act or the former Act under which it was issued. R.S.O. 1970, c. 274, s. 110.

102.—(1) In a patent or lease of a mining claim, the Minister shall reserve all surface rights and other rights excluded by or withdrawn under this Act or that have otherwise been alienated by the Crown.

Disposal of
surface
rights

(2) Any surface rights reserved under this section may be dealt with under Part VII or under the *Public Lands Act* or the regulations made thereunder. R.S.O. 1970, c. 274, s. 111.

Idem
R.S.O. 1980,
c. 413

103.—(1) Every patent of Crown lands that purports to be issued under this Act, unless it is otherwise expressly stated, vests in the patentee of the estate thereby granted all title of the Crown in such lands and all mines and minerals therein.

Patents
issued under
this Act
to vest
minerals

(2) Notwithstanding section 19 of the *Conveyancing and Law of Property Act*, where a patent or lease of a mining claim was or is issued under this Act on or after the 1st day of July, 1914, and the patent or lease reserves the surface rights, section 16 of the *Conveyancing and Law of Property Act* applies if the surface rights were the property of the Crown and were not applied for or occupied at the time that the mining claim was staked out and recorded. R.S.O. 1970, c. 274, s. 112.

Application of
R.S.O. 1980,
c. 90

104.—(1) All lands, claims or mining rights patented, leased or otherwise disposed of under this or any other Act or by any authority whatsoever are subject to the condition that all ores or minerals raised or removed therefrom shall be treated and refined in Canada so as to yield refined metal or other product suitable for direct use in the arts without further treatment, in default whereof the Lieutenant Governor in Council may declare the lease, patent or other form of title of such lands, claims or mining rights to be void, and the order in council so declaring shall be registered in the proper land registry office, or in the case of a licence of occupation, filed in the Minister's office, whereupon such lands, claims or mining rights revert to and become vested in Her Majesty, Her heirs and successors, freed and discharged of any interest or claim of any other person.

Condition
of patent
ores to be
treated in
Canada

(2) For the purposes of subsection (1), the Minister may determine the stage of refinement at which any mineral substance is refined metal or other product suitable for direct use in the arts without further treatment.

Idem

(3) The Lieutenant Governor in Council may exempt any lands, claims or mining rights from the operation of this section for such period of time as seems proper.

Exemptions

Where
conflict,
section
prevails

(4) Where there is any conflict between the provisions of this section and the provisions of any general or special Act, the provisions of this section prevail. R.S.O. 1970, c. 274, s. 113.

Reservation
of trees and
right of
entry

105.—(1) Every patent or lease of Crown lands issued under this Act shall contain a reservation to the Crown of all timber and trees standing, being or hereafter found growing upon the lands thereby granted or leased, and of the right to enter upon such lands to carry on forestry, to cut and remove any timber or trees thereon, and to make necessary roads for such purposes.

Exercise of
rights
reserved

(2) The rights reserved in subsection (1) may be exercised by any person holding a licence or permit from the Crown when authorized to do so by the Minister.

Ownership
of trees
remains in
Crown

(3) All timber and trees on Crown lands that have been staked out and recorded under this Act remain the property of the Crown, and the Crown may enter upon such lands to carry on forestry, to cut and remove any timber or trees thereon, and to make necessary roads for such purpose.

Conditions
under which
holder,
owner or
lessee may
cut trees

(4) Notwithstanding subsections (1) and (3) and subject to subsections (5) and (6), the recorded holder of a mining claim staked on Crown lands or the owner or lessee of lands acquired under this Act may cut such trees on the lands so staked or acquired as may be necessary for building, fencing or fuel purposes or for any other purpose necessary for the development or working of the minerals thereon.

Idem

(5) Where a licence or permit from the Crown to cut timber on the land has not been granted, the recorded holder, owner or lessee may, on application to the Minister, be granted permission to cut and use the trees for the purposes mentioned in subsection (4) either without payment or on such terms and conditions as the Minister imposes.

Idem

(6) Where a licence or permit from the Crown to cut timber on the lands has been granted, the recorded holder, owner or lessee shall compensate the timber licensee or permittee for the trees cut or used by him.

Determina-
tion of
disputes

(7) Where a dispute arises between the recorded holder, owner or lessee and the timber licensee or permittee as to the value or quantity of the trees cut or used under subsection (6), the Minister shall determine the dispute and his decision is final.

(8) This section does not confer upon the recorded holder, owner or lessee of the mining rights any right to cut trees upon the lands on which he has staked or acquired only the mining rights. R.S.O. 1970, c. 274, s. 114.

Holder, etc.,
of mining
rights not
to cut trees

106. Where letters patent, leases, licences or other instruments of title have been issued to or in the name of the wrong person through mistake, or contain any clerical error or misnomer, or a wrong description of the land intended to be granted, the Deputy Minister, if there is no adverse claim and whether or not the land has been registered under the *Land Titles Act* or the *Registry Act*, may direct the defective instrument to be cancelled and a correct one to be issued in its stead and the corrected instrument shall relate back to the date of the one so cancelled and has the same effect as if issued on the date of the cancelled instrument. R.S.O. 1970, c. 274, s. 115.

Cancellation
of erroneous
patents

107. Where patents, leases, licences or other instruments of title have been issued under this Act for any land or mining rights affected by an annulment under subsection 7 (1) of the *Public Lands Act*, the Deputy Minister, whether or not the land has been registered under the *Land Titles Act* or the *Registry Act*, may cause such instrument of title to be cancelled and an instrument containing a revised description of the land or mining rights to be issued in its stead, and the corrected instrument shall relate back to the date of the one so cancelled and has the same effect as if issued on the date of the cancelled instrument. R.S.O. 1970, c. 274, s. 116.

Surveys
under
annulments

R.S.O. 1980,
cc. 413, 230,
445

SURVEY OF CLAIM BEFORE ISSUE OF PATENT

108.—(1) Before a patent, lease or licence of occupation of a mining claim in unsurveyed territory is applied for, the claim shall be surveyed by an Ontario land surveyor at the expense of the applicant, but no survey of a mining claim, except a perimeter survey consented to by the Minister under subsection (3), shall be made without the written consent of the recorder.

When
survey
required in
unsurveyed
territory

(2) The Lieutenant Governor in Council may make regulations prescribing the method and procedure to be followed in surveying mining claims.

Regulations
for surveying

(3) Where two or more mining claims in unsurveyed territory are contiguous and are recorded in the same name, the Minister may, in special circumstances and upon application therefor, consent to a perimeter survey being made of the circumference of the contiguous claims in lieu of a survey under subsection (1).

Perimeter
survey

Minister
to issue
written
instructions

(4) Where the Minister consents to a perimeter survey being made under subsection (3), he shall issue written instructions prescribing its conduct and filing.

Application
of s. 77 (1-4)

(5) Subsections 77 (1), (2), (3) and (4) apply with necessary modifications in the case of a perimeter survey except that a perimeter survey counts as ten days work on each claim in the group.

Price or
rental
where area
exceeds
prescribed
area

(6) Where a perimeter survey is made under subsection (3), the price or rental shall be computed on the total area of the claims within the perimeter survey, and, where the average area of the claims within the perimeter survey exceeds by more than five acres the area prescribed for a mining claim in section 42, the price or rental for the area in excess of that so prescribed is twice the price or rental provided for in this Act, and there shall be performed at least five days work per acre for the excess area.

Where
additional
work is
required

(7) Where additional work is required under subsection (6), the Minister may prescribe the time within which such work is to be performed and recorded, and application for patent or lease shall be made within the time so prescribed. R.S.O. 1970, c. 274, s. 117 (1-7).

Mining
claims to
be inspected
before
perimeter
survey made

(8) Before a perimeter survey is made, the mining claims proposed to be included in the perimeter survey shall be inspected by an inspector or other officer of the Ministry who shall prepare and submit to the Minister a report and plan showing the claim posts, legible markings, metal tags, claim lines and any other data useful in determining whether the claims have been properly staked out on the ground, and the survey shall not be directed to be made unless the Minister is satisfied that the requirements of this Act have been complied with. R.S.O. 1970, c. 274, s. 117 (8); 1972, c. 1, s. 1.

Fee

(9) The fee for an inspection under subsection (8) is \$5 per claim, payable in advance, and the Minister may require the applicant to provide the inspector with suitable transportation to the location of the claims.

Cancellation
of work

(10) Where, after a perimeter survey has been made, one or more of the claims within the perimeter survey is cancelled for any reason or where the holder of a recorded interest ceases to be the holder of an undivided interest in the whole, the survey is void, and thereupon the recorder shall cancel the entry on the record and he shall also cancel the work recorded on account of the survey. R.S.O. 1970, c. 274, s. 117 (9, 10).

109.—(1) Where, upon an application for a patent, lease or licence of occupation of a mining claim in surveyed territory, the Minister is of opinion that a survey is necessary, he may direct that a survey thereof be made at the expense of the applicant, and the survey, unless otherwise ordered, shall comply with the same requirements as a survey of a mining claim in unsurveyed territory.

Minister may direct survey of claim in surveyed territory

(2) Where a survey is required under subsection (1), the Minister may specify the time within which such work is to be performed and recorded, and the application and payment for a patent, lease or licence of occupation shall be made within the time so specified. R.S.O. 1970, c. 274, s. 118.

Time limits

110.—(1) If it is found upon a survey required or authorized by this Act that the area of a mining claim exceeds the prescribed acreage, the Minister may reduce the area to the prescribed acreage or thereabouts in any way he sees fit.

Reduction of area of claim

(2) Where two or more mining claims in unsurveyed territory are contiguous and constitute a group recorded in the name of one licensee and it was the manifest intention of the applicant or applicants, as shown by the sketch or sketches accompanying his or their application or applications for the same, to include as part of such mining claims all lands and lands under water within the limits of such group, and a survey shows that certain of the lands or lands under water are not so included, such lands or lands under water shall nevertheless be deemed to be part and parcel of the claim or claims in which it was the manifest intention that they should be included, and where two or more mining claims are contiguous and are recorded in the name or names of more than one licensee, any fraction or gore shown or created by a survey is not open for staking out until the Minister so directs, and the Minister, on the report of the Surveyor General, may award such fraction or gore, or part thereof, to the recorded holder or holders of either or both of the contiguous claims, or may sell, lease, or otherwise dispose of the same as he sees fit without requiring such fraction or gore to be staked out as a mining claim. R.S.O. 1970, c. 274, s. 119.

Lands accidentally omitted, disposition of gores and fractions

PART III

PLACER MINING

111. A licensee who makes a discovery of a natural stratum, bed or deposit of sand, earth, clay, gravel or cement carrying gold, platinum or precious stones that is probably of such size and character as to be likely to be

Placer mining claims

workable at a profit may stake out and record a mining claim to be called a Placer Mining Claim thereon, and the provisions of this Act as to the staking out and recording of a mining claim upon the discovery of valuable mineral in place thereon, as far as practicable, apply to the staking out of a placer mining claim as if the words "a natural stratum, bed or deposit of sand, earth, clay, gravel or cement carrying gold, platinum or precious stones that is probably of such size and character as to be likely to be workable at a profit" were used instead of "valuable mineral in place", and the other provisions of this Act as to mining claims, as far as practicable, apply to a placer mining claim, and "mining claim" wherever used in this Act shall, unless repugnant to the context, be read as including placer mining claim. R.S.O. 1970, c. 274, s. 120.

PART IV

PETROLEUM, GAS, COAL AND SALT

Boring
permits to
explore for
oil, gas, coal
or salt

112.—(1) A licensee may obtain from the Minister a boring permit in the prescribed form granting him the exclusive right for a period of one year to prospect for petroleum or natural gas upon an area of land open for prospecting and staking out in those parts of Ontario lying north and west of the River Mattawa, Lake Nipissing, and the French River,

- (a) by staking out such area by planting or erecting a post at each corner thereof in the manner and with the numbering provided by section 47, and writing or placing upon each post,
 - (i) the words "Boring Permit Applied For",
 - (ii) his name and the letter and number of his licence,
 - (iii) the date of the staking out, and
 - (iv) a statement of the area to be included in the application;
- (b) by furnishing the recorder with an application in duplicate verified by affidavit in the prescribed form not later than thirty-one days from the date of staking;
- (c) by forwarding to the Minister not more than ninety days thereafter a plan or diagram showing as nearly as possible the situation of the lands, and a

written description of the lands, including, if the area is in surveyed territory, the number of the lots and concessions or sections or quarter sections or other subdivisions, together with a fee of \$100; and

- (d) by proving to the satisfaction of the Minister that he has paid or secured to the owner of the surface rights, if any, the compensation agreed upon or determined as provided in section 92 for any injury or damage that is or may be caused to the surface rights, or, in default of agreement, that he has paid or secured such compensation, as determined in the manner provided by section 92.

(2) One duplicate of the application shall be forthwith ^{Posting applications} posted up by the recorder in his office and the other forwarded by him to the Minister.

(3) The area of land included in a boring permit, if in ^{Form of area to be included in permit} unsurveyed territory, shall be rectangular in form and shall not exceed 640 acres in extent, the boundary lines thereof being due north and south and due east and west astronomically, and if in surveyed territory, need not be rectangular in form but may consist of any number of contiguous lots, quarter sections or subdivisions of a section containing in all not more than 640 acres.

(4) The holder of a boring permit shall enter upon the ^{Working conditions} area described therein within two months from the granting of the permit, and during the term of the permit shall expend thereon in actual boring, sinking, driving or otherwise searching for petroleum or natural gas a sum amounting to not less than \$2 per acre.

(5) Upon proof being furnished to the Minister that ^{Renewal of permit} such expenditure has been made and that all other terms and conditions of the permit have been complied with, the Minister, at the expiration of the boring permit, may grant one renewal of the permit for one year upon payment of a fee of \$100, and the renewal is subject to the like conditions as to expenditure and otherwise as the original permit.

(6) The holder of a boring permit may, with the consent ^{Transfer of permit} of the Minister endorsed thereon, transfer, in the prescribed form, all his rights in the permit or the land included therein, and, upon the consent being given, the licensee to whom the permit is transferred is entitled to the unexpired term of the permit, with any right of renewal thereof.

Limitation

(7) A licensee shall not in any one licence year stake out more than three areas or apply for or obtain more than three boring permits. R.S.O. 1970, c. 274, s. 121.

Lease may
issue on
discovery

113.—(1) Upon the holder of a boring permit proving to the satisfaction of the Minister that he has discovered petroleum or natural gas or any one or more of such substances in commercial quantities upon the land included therein, the Minister may direct the issue to the holder of the permit of a lease of the land or a part of it for a term of ten years at an annual rental of \$1 per acre, payable in advance and subject to the expenditure of not less than \$2 per acre per annum, in obtaining petroleum or natural gas or any one or more of such substances therefrom or in actual *bona fide* operations or works undertaken or made for the purpose of obtaining the same, and the lessee has the right of renewal of the lease at the expiration of the first term of ten years for a further term of ten years at the same rental, and at the expiration of the second term for a term of twenty years at such renewal rental as is then agreed upon or provided by statute or regulation.

Regulations
as to leases

(2) Every such lease shall contain such other conditions, stipulations and provisos as the Lieutenant Governor in Council prescribes, and is forfeit and void if the rental payable thereunder is not paid when due or upon failure to expend the money required by subsection (1) to be laid out or upon failure to comply with any of the terms and conditions of the lease, but relief from forfeiture for failure to pay rent when due may be had by the payment of all arrears within ninety days after the rent became payable. R.S.O. 1970, c. 274, s. 122 (1, 2).

Rights
of lessee

(3) The right conferred by such a lease upon the lessee is to enter upon the land described, and to dig, bore, sink, drive or otherwise search for and obtain, raise and remove petroleum and natural gas or any one or more of such substances, and all other valuable minerals are reserved to the Crown, and a holder of a prospector's licence may at all times go upon the land and prospect the land and stake out a mining claim thereon, but subject to compensating the lessee for any injury or damage to his interest in the land at the time and in the manner provided in section 92, and may obtain a patent therefor, but the patent shall reserve the petroleum and natural gas in, on or under the land. R.S.O. 1970, c. 274, s. 122 (3); 1972, c. 116, s. 22.

Survey
required in
unsurveyed
territory

(4) No such lease shall issue for land in unsurveyed territory until a plan of survey made by an Ontario land surveyor is filed in the Ministry, and such survey shall be in conformity with this Act and to the satisfaction of the Minister. R.S.O. 1970, c. 274, s. 122 (4); 1972, c. 1, s. 1.

(5) The holder of a boring permit or of a lease for petroleum or natural gas is not entitled to the timber upon the land included in the permit or lease but, if the land is not covered by timber licence and has not been located, sold or patented under the *Public Lands Act*, may, with the permission of the Minister and upon payment of such rates as are fixed, cut and use such timber as is necessary for boring and working the land. R.S.O. 1970, c. 274, s. 122 (5). Timber to be reserved
R.S.O. 1980, c. 413

114. Notwithstanding anything in sections 112 and 113, the Minister, with the approval of the Lieutenant Governor in Council, may make such regulations as he thinks fit respecting the issue of boring permits authorizing the holders thereof to prospect for petroleum or natural gas in that part of Ontario lying north of the fifty-first parallel of latitude and predominately underlain with paleozoic rock formations and for the issue of leases upon such terms as the Minister sees fit. R.S.O. 1970, c. 274, s. 123. Regulations for boring permits

115. The Lieutenant Governor in Council may make regulations respecting the issue of licences to explore for and leases to produce natural gas and petroleum from Crown lands lying south and east of the River Mattawa, Lake Nipissing, and the French River, including, Regulations

- (a) fees, rents and royalties payable in respect thereof; and
- (b) the bonding of licensees and the conditions of forfeiture of bonds. R.S.O. 1970, c. 274, s. 124.

PART V

EXPLORATORY LICENCES AND DREDGING LEASES

116. The Lieutenant Governor in Council may make regulations respecting the issue of licences to explore and leases to dredge or work in any river, stream or lake or lands not covered by water for the purpose of recovering therefrom alluvial gold, platinum, precious stones or any other valuable mineral not in place. R.S.O. 1970, c. 274, s. 125. Regulations

PART VI

EXPLORATORY LICENCES AND PRODUCTION LEASES IN PALEOZOIC ROCK FORMATIONS

117. The Minister, with the approval of the Lieutenant Governor in Council, may make regulations respecting licences to explore for and leases to mine minerals in Regulations for map staking

designated areas in that part of Ontario lying north of the fifty-first parallel of latitude and predominately underlain with paleozoic rock formations. R.S.O. 1970, c. 274, s. 126.

PART VII

QUARRY PERMITS

Quarry permit

118.—(1) No person shall take or remove or cause to be taken or removed any stone or rock quarried for any industrial or commercial purpose, limestone, marble, granite, quartz, feldspar, fluorspar, gypsum, diatomaceous earth, clay, marl, peat, sand or gravel that is the property of the Crown unless he is the holder of a quarry permit. R.S.O. 1970, c. 274, s. 127 (1).

Application

(2) Application for a quarry permit may be made in the prescribed form to the Minister, Deputy Minister or a recorder. 1971, c. 102, s. 5 (1).

Issue

(3) The Minister, the Deputy Minister or a recorder may issue quarry permits upon application therefor and upon payment of the prescribed fees. R.S.O. 1970, c. 274, s. 127 (3).

Issue free of charge

(4) Notwithstanding subsection (3), a quarry permit may be issued free of charge to any municipality, or to any resident of Ontario if the material to be taken or removed is for his own use and not for sale or for use for any commercial or industrial purpose, but, where more than 500 cubic yards of material is to be taken or removed, the permit shall not be issued free of charge without the approval of the Minister. R.S.O. 1970, c. 274, s. 127 (4); 1971, c. 102, s. 5 (2).

Term

(5) A quarry permit shall expire on the first anniversary date of its issue, unless otherwise stated in the permit. 1971, c. 102, s. 5 (3).

Transfer

(6) No quarry permit shall be transferred without the written consent of the Minister or the Deputy Minister. R.S.O. 1970, c. 274, s. 127 (6).

Plan

(7) The Minister may require an applicant for a quarry permit to file a plan of the area in which he desires to operate, indicating the extent and nature of the deposit and the location of any buildings or improvements adjacent to the deposit. R.S.O. 1970, c. 274, s. 127 (8).

119.—(1) The Minister may refuse to renew or may suspend or revoke a quarry permit on the grounds that, ^{Suspension, etc., of permit}

- (a) the permittee has contravened any provision of this Part;
- (b) no operations have been carried on under the permit for a continuous period of more than six months;
- (c) the permittee is not employing equipment that in the opinion of the Minister is proper and suitable for the operations pursuant to the permit; or
- (d) the Minister considers the continuation of operations under the permit to be contrary to the public interest,

but, subject to subsection (8), before so doing he shall give the permittee notice of his intention to refuse to renew or to suspend or revoke the permit, together with written reasons therefor.

(2) A notice under subsection (1) shall inform the permittee that he is entitled to a hearing by the Commissioner if he mails or delivers a notice in writing requiring such hearing to the Minister within fifteen days after the notice under subsection (1) is served on him, and the Minister, on receipt of a notice requiring a hearing, shall refer the matter to the Commissioner for a hearing. ^{Notice requiring hearing}

(3) Where a permittee does not require a hearing by the Commissioner in accordance with subsection (2), the Minister may carry out the intention stated in his notice under subsection (1). ^{Powers of Minister where no hearing}

(4) Pursuant to a reference by the Minister under this section, the Commissioner shall hold a hearing as to whether the permit to which the hearing relates should be renewed or should be suspended or revoked, as the case may be, and the permittee and such other persons as the Commissioner may specify are parties to the hearing. ^{Hearing}

(5) Sections 6 to 16 and sections 21 to 23 of the *Statutory Powers Procedure Act* apply in respect of a hearing under this section. ^{Application of R.S.O. 1980, c. 484}

(6) The Commissioner shall, at the conclusion of a hearing under this section, make a report to the Minister setting out his findings of fact and any information or knowledge ^{Report to Minister}

used by him in reaching his recommendations, any conclusions of law he has arrived at relevant to his recommendations, and his recommendations as to the renewal, suspension or revocation of the permit to which the hearing relates, as the case may be, and shall send a copy of his report to the permittee to whom it relates.

Decision of
Minister

(7) After considering the report of the Commissioner under this section, the Minister may thereupon renew or refuse to renew, or suspend or revoke or refrain from suspending or revoking the permit to which the report relates and shall give notice of his decision to the permittee specifying the reasons therefor.

Provisional
suspension,
etc., of
permit

(8) Notwithstanding anything in this section, the Minister, by notice to a permittee and without a hearing, may provisionally refuse renewal of or suspend the permittee's permit, where in the Minister's opinion the continuation of operations under the permit is in contravention of this Act, will cause damage to property, or is an immediate threat to the public interest, and the Minister so states in the notice, giving his reasons therefor, and thereafter the Minister shall refer the matter to the Commissioner and subsections (3) to (6) apply and the provisional refusal or suspension terminates when the Minister's decision under subsection (6) becomes effective unless sooner terminated by the Minister. 1971, c. 50, s. 58 (7).

Amount to
be paid for
material
removed

120.—(1) The holder of a quarry permit, other than the holder of a quarry permit issued free of charge, shall pay the Crown for the material taken or removed such amount as the Minister may determine.

How
determined

(2) In determining the amount to be paid under subsection (1), the Minister shall have regard to the location, type and accessibility of the deposit and the amount of the material taken or removed.

Security

(3) The Minister may require the holder of a quarry permit to give security by bond or otherwise for the payment of such amounts. R.S.O. 1970, c. 274, s. 128.

Records

121. The holder of a quarry permit shall keep a detailed record of his operations and shall retain copies of all documents relating to sales and shipments, and all accounts, records and documents relating to his operations shall be kept available for inspection by any person authorized by the Minister to inspect such accounts, records and documents. R.S.O. 1970, c. 274, s. 129.

122. Any person authorized by the Minister, Deputy Minister or a recorder may enter any premises covered by a quarry permit and shall have access to all accounts, records and documents kept in relation to the operation of the quarry. R.S.O. 1970, c. 274, s. 130; 1971, c. 102, s. 6. ^{Power to inspect}

123. The holder of a quarry permit shall make a return on the prescribed form on or before the tenth day of each month showing the quantity and destination of the material taken or removed during the next preceding month. R.S.O. 1970, c. 274, s. 131. ^{Returns}

124. A quarry permit does not affect the right of a licensee to stake out a mining claim on the lands covered by the permit and any question of property damage shall be determined in the manner provided in section 92. R.S.O. 1970, c. 274, s. 132. ^{Licensee, right of}

125. Every person who contravenes any of the provisions of this Part is guilty of an offence and on conviction is liable to a fine of not more than \$1,000. 1971, c. 102, s. 7. ^{Offence}

PART VIII

MINING AND LANDS COMMISSIONER

126. Except as provided by section 185, no action lies and no other proceeding shall be taken in any court as to any matter or thing concerning any right, privilege or interest conferred by or under the authority of this Act, but, except as in this Act otherwise provided, every claim, question and dispute in respect of such matter or thing shall be determined by the Commissioner, and in the exercise of the power conferred by this section the Commissioner may make such order or give such directions as he considers necessary to make effectual and enforce compliance with his decision. R.S.O. 1970, c. 274, s. 135. ^{Jurisdiction}

127.—(1) The Commissioner has no power or authority to declare forfeited or void or to cancel or annul any Crown patent issued for lands, mining lands, mining claims or mining rights, but every action and every proceeding to declare forfeited or void or to cancel or annul any such Crown patent may be brought or taken in the Supreme Court. ^{Crown patents}

Where
cancellations
permitted

(2) Subsection (1) does not apply to cancellations or forfeitures provided for in this Act or in the patent. R.S.O. 1970, c. 274, s. 138.

Transfer of
proceeding
to Supreme
Court

128. A party to a proceeding under this Act brought before the Commissioner and involving any right, privilege or interest or in connection with any patented lands, mining lands, mining claims or mining rights, may, at any stage of the proceeding, apply to the Supreme Court for an order transferring the proceeding to the Supreme Court. R.S.O. 1970, c. 274, s. 139.

Reference
from court
to Commis-
sioner

129. Where in the opinion of the court in which an action is brought the proceeding may be more conveniently dealt with or disposed of by the Commissioner, the court may, upon the application of a party or otherwise and at any stage of the proceeding, refer the action or any question therein to the Commissioner as an official referee on such terms as to the court seems just and the Commissioner shall thereafter give directions for the continuance of the proceeding before him, and, subject to the order of reference, all costs are in his discretion. R.S.O. 1970, c. 274, s. 140.

Transfer
from court
to Com-
missioner

130. Where a proceeding that should have been taken before the Commissioner is brought in a court, the court may, upon the application of a party or otherwise and at any stage of the proceeding, transfer it to the Commissioner. R.S.O. 1970, c. 274, s. 141.

Recorder
may
determine
disputes

131.—(1) Subject to the right of appeal provided in section 133, a recorder has power to hear and determine disputes between licensees as to unpatented mining claims situate in his mining division. R.S.O. 1970, c. 274, s. 143 (1); 1971, c. 50, s. 58 (11).

When
recorder
to decide
matter in
first instance

(2) Any question arising before the issue of a certificate of record of a mining claim as to whether the provisions of this Act regarding a mining claim have been complied with, unless the Commissioner otherwise orders or unless the recorder with the consent of the Commissioner transfers the question to the Commissioner for his decision, shall in the first instance be decided by the recorder.

Note and
notice of
recorder's
decision

(3) The recorder shall enter forthwith in the book of his office a full note of every decision made by him, and shall notify the persons affected thereby of the decision by registered letter mailed not later than the next day after the entry of the note.

(4) Every person affected by the decision is entitled upon payment of the prescribed fee to receive from the recorder a certificate thereof which shall contain the date of the entry of the decision in the books of the recorder. R.S.O. 1970, c. 274, s. 143 (2-4). Certificate of decision

(5) The decision of the recorder is final and binding unless appealed from as provided in section 133. R.S.O. 1970, c. 274, s. 143 (5); 1971, c. 50, s. 58 (12). Finality of decision

(6) Where he is satisfied that there is substantial compliance with the provisions of this Act, the recorder may make an order directing a holder, Recorder may order the removal of witness posts, etc.

(a) to move, remove or alter corner posts and witness posts and the writing or inscribing thereon;

(b) to move or alter claim lines;

(c) to replace metal tags that have been removed or destroyed after having been affixed to the corner posts; or

(d) to replace missing corner posts and witness posts and to affix tags to such posts,

and the recorder shall set out in the order the time within which the work shall be completed and reported to him.

(7) Where the work prescribed in an order under subsection (6) has not been completed within the time set out in the order, the recorder may cancel the claim or claims on which the work was to have been done and shall, by registered letter, mailed not later than the next day after the cancellation, notify the holder of his action and the reason therefor. Recorder may cancel claim

(8) This section applies to the manner in which the metal tags have been affixed to the corner posts, notwithstanding that the period prescribed in subsection 54 (5) has not fully expired. R.S.O. 1970, c. 274, s. 143 (6-8). Application

132.—(1) The recorder may give directions for the conduct and carrying on of proceedings before him, and in so doing he shall adopt the cheapest and simplest methods of determining the questions arising before him that afford to all interested parties an adequate opportunity of knowing the issues in the proceedings and of presenting material and making representations on their behalf. Directions as to conduct of proceedings

Reasons for
decision

(2) The recorder shall give reasons for any decision made by him in proceedings before him.

Enforcement
of decision

(3) A copy of the final decision of a recorder may be filed in the office of the Registrar of the Supreme Court under section 19 of the *Statutory Powers Procedure Act*, which applies thereto.

Application of
R.S.O. 1980,
c. 484

(4) Except as provided in subsection (3), the *Statutory Powers Procedure Act* does not apply to proceedings before the recorder. 1971, c. 50, s. 58 (13), *part*.

Appeal to
Commissioner

133.—(1) A person affected by a decision of or by any act or thing, whether ministerial, administrative or judicial, done, or refused or neglected to be done by a recorder may appeal to the Commissioner.

Appeal by
Director

(2) An appeal under subsection (1) may be taken by the Director or the Supervisor on his behalf where, in the opinion of the Minister, the public interest is affected, and no fee prescribed in the Schedule in respect of the appeal is payable by the Director or Supervisor.

How appeal
instituted

(3) An appeal to the Commissioner shall be by notice in writing in the prescribed form, filed in the office of the recorder from whom the appeal is being taken and served upon all parties interested within fifteen days from the entry of the decision on the books of the recorder or the doing by the recorder of the act or thing appealed from, or within such further period of not more than fifteen days as the Commissioner may allow, but if the notice of appeal has been filed with the recorder within such time and the Commissioner is satisfied that it is a proper case for appeal and that after reasonable effort any of the parties entitled to notice could not be served within such time, the Commissioner may extend the time for appealing and make such order for substitutional or other service as he considers just, or if a person affected has not been notified as provided in sections 90 and 131, and appears to have suffered substantial injustice and has not been guilty of undue delay, the Commissioner may allow such person to appeal.

Service of
notice of
appeal

(4) The notice of appeal shall contain or have endorsed upon it an address in Ontario at which the appellant may be served with any notice or document relating to the appeal, and any such notice or document is sufficiently served upon the appellant if it is left with a grown-up person at such address or, where no such person can there be found, if sent by registered mail addressed to the appellant at such address.

(5) If no address for service is given as provided in subsection (4), any such notice or document may be served upon the appellant by posting it up in the recorder's office. 1971, c. 50, s. 58 (13), *part*. Where no address for service

134. The Commissioner shall determine,

Hearing

(a) an appeal from a recorder, after a hearing by way of a hearing *de novo*; and

(b) a dispute referred to in section 56 or a claim, question, dispute or other matter within his jurisdiction after a hearing,

pursuant to an appointment fixing the time and place for the hearing. 1971, c. 50, s. 58 (13), *part*.

135.—(1) Application to the Commissioner for an appointment for a hearing may be made by any party to the proceeding and may be verbal or written or may be *ex parte* or upon such notice to such persons as the Commissioner may direct. Application for appointment for hearing

(2) The Commissioner may fix such time for a hearing as will permit the matter to be disposed of as promptly as possible, allowing adequate time to the parties to prepare their cases but, unless all parties consent thereto, the hearing shall be held not less than ten days after service of the appointment for the hearing on the parties. Time for hearing

(3) The Commissioner shall select as the place for a hearing such place as he considers most convenient for the parties in the county or district or one of the counties or districts in which the lands or mining rights affected are situate unless it appears to him desirable that the hearing should be in some other county or district. Place for hearing

(4) In any matter or proceeding, other than an appeal, the Commissioner may, if a certificate of record has been issued, require the applicant for an appointment to satisfy him that there is reasonable ground for the application or, in any such case or in any case where leave to take the proceeding is necessary, may give the appointment or leave only upon such terms as to security for costs or otherwise as he considers just. 1971, c. 50, s. 58 (13), *part*. Leave for hearing

136.—(1) The Commissioner shall cause a copy of an appointment for a hearing before him to be served upon all parties, which shall, except in the case of an appeal Service of appointment for hearing

or a dispute under section 56, state briefly the particulars of the right or question in issue or of the dispute.

Hearing
may proceed
in absence
of party

(2) The appointment shall state that if a person has been served and does not attend the hearing, the Commissioner may proceed in his absence and he is not entitled to notice of any further proceedings.

Service
deemed
compliance
with
R.S.O. 1980,
c. 484

(3) Service by registered mail of the appointment and of the notice, if any, required under subsection (1) shall be a sufficient compliance with section 6 of the *Statutory Powers Procedure Act*. 1971, c. 50, s. 58 (13), *part*.

Directions
of Commis-
sioner re
proceedings

137.—(1) Sections 135 and 136 apply notwithstanding the *Statutory Powers Procedure Act* and, subject to that Act, the Commissioner may,

- (a) give directions for having any matter or proceeding heard and decided without unnecessary formality;
- (b) order the filing or serving of statements, particulars, objections or answers, the production of documents and things, and the making of amendments;
- (c) give such other directions respecting the procedure and hearing as he considers proper;
- (d) make any appointment, notice or other proceeding returnable forthwith or at such time as he considers proper; and
- (e) order or allow such substituted or other service as he considers proper.

Taking of
evidence

(2) The Commissioner may take or order the evidence of any witness to be taken at any place in or out of Ontario. 1971, c. 50, s. 58 (13), *part*.

Decision
of Commis-
sioner

138. Notwithstanding the *Statutory Powers Procedure Act*, the Commissioner may hear and dispose of any application not involving the final determination of the matter or proceeding, either *ex parte* or on notice, at any place he considers convenient, and his decision upon any such application is final and is not subject to appeal but, where the Commissioner makes his decision *ex parte*, he may subsequently reconsider and amend such decision. 1971, c. 50, s. 58 (13), *part*.

139. The Commissioner may obtain the assistance of ^{Expert assistance} engineers, surveyors or other scientific persons who may under his order view and examine the property in question, and in giving his decision he may give such weight to their opinion or report as he considers proper. R.S.O. 1970, c. 274, s. 150.

140.—(1) The Commissioner, in addition to hearing the evidence adduced by the parties, may require and receive ^{Commissioner may call for evidence and view property} such other evidence as he considers proper, and may view and examine the property in question and give his decision upon such evidence or view and examination, or may appoint a person to make an inspection of the property, and may receive as evidence and act upon the report of the person so appointed.

(2) Where the Commissioner proceeds partly on a view ^{Statement of view or special knowledge} or on any special knowledge or skill possessed by himself, he shall put in writing a statement of the same sufficiently full to enable a judgment to be formed of the weight that should be given thereto.

(3) Where the parties consent in writing, the Commis- ^{View only} sioner may proceed wholly upon a view, and in such case his decision is final and is not subject to appeal. R.S.O. 1970, c. 274, s. 151.

141. Where the Commissioner receives any opinion, ^{Disclosure of evidence to parties} report or evidence under section 139 or 140 in any proceeding before him, the opinion, report or evidence shall be disclosed to the parties to the proceeding who, if they so request, shall be afforded an opportunity of cross-examining the person expressing the opinion, making the report or giving the evidence. 1971, c. 50, s. 58 (14).

142. The Commissioner shall give his decision upon the ^{Decision on the merits} real merits and substantial justice of the case. R.S.O. 1970, c. 274, s. 152.

143. Where the Commissioner considers the matter or ^{Security for costs} proceeding vexatious or where it is brought by a person residing out of Ontario, he may order that such security for costs as he considers proper be given and that in default of such security being given within the time limited or in default of speedy prosecution the matter or proceeding be dismissed. R.S.O. 1970, c. 274, s. 153.

144. Where the hearing is to be held at a place where ^{Use of court rooms, etc.} a court house is situate, the Commissioner has the right to use the court room, and where the hearing is to take

place in a municipality in which there is a hall belonging to the municipality, but no court room, he has the right to use the hall. R.S.O. 1970, c. 274, s. 154.

Sheriffs, etc.,
to assist

145. Sheriffs, deputy sheriffs, constables and other peace officers shall aid, assist and obey the Commissioner in the exercise of the powers conferred on him by this Act whenever required so to do and shall upon the certificate of the Commissioner be paid the same fees as for similar services in carrying out the orders of a judge of the Supreme Court. R.S.O. 1970, c. 274, s. 155.

Recording of
evidence

146. The evidence taken before the Commissioner shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court. 1971, c. 50, s. 58 (15).

Costs

147. The Commissioner may in his discretion award costs to any party, and may direct that such costs be taxed by the clerk of the county or district court or by a local taxing officer or by one of the taxing officers at Toronto, or may order that a lump sum be paid in lieu of taxed costs. R.S.O. 1970, c. 274, s. 157.

Scale of
costs

148.—(1) The costs and disbursements payable upon proceedings before the Commissioner as to any matter in which the amount or value of the property in question does not in the opinion of the Commissioner exceed \$400 shall be according to the tariff of the county court and as to any matter in which the amount or value of the property in question in his opinion exceeds \$400 shall be according to the tariff of the Supreme Court.

Idem

(2) The Commissioner shall in his order or award direct the tariff upon which the costs and disbursements shall be taxed.

Counsel
fees

(3) The Commissioner has the same powers as a judge of a county court or a taxing officer of the Supreme Court with respect to counsel fees. R.S.O. 1970, c. 274, s. 158.

Witness
fees

149. The fee and conduct money to be paid to a witness before the Commissioner or recorder shall be according to the county court scale. R.S.O. 1970, c. 274, s. 159.

Form of
decision

150.—(1) Except where inapplicable, the decision of the Commissioner shall be in the form of an order or judgment, but need not show upon its face that any proceeding or notice was had or given or that any circumstance existed necessary to give jurisdiction to make the order or judgment. R.S.O. 1970, c. 274, s. 160 (1).

(2) The order or judgment of the Commissioner, with the evidence, exhibits, the statement, if any, of view or of special knowledge or skill, and the reasons for his decision shall be filed in the office of the recorder of the division in which the property in question or part of it is situate or, where section 16 applies, with the Deputy Minister, and the recorder or Deputy Minister shall forthwith give notice in writing of the filing by registered mail or otherwise to the solicitors of the parties appearing by solicitor and to parties not represented by a solicitor. 1971, c. 50, s. 58 (16).

Documents
to be filed
in recorder's
office

(3) Where the order or judgment is not filed with the recorder of the division in which the property affected is situate, the Commissioner shall transmit a duplicate thereof to such recorder. R.S.O. 1970, c. 274, s. 160 (3).

Idem

151.—(1) The Commissioner shall make in the books of his office a full note of every decision given by him.

Entry of
decision

(2) Where a decision of the Commissioner finally disposes of the matter in question so far as he is concerned, he shall give notice of the purport of his decision to the parties by registered mail addressed to them at their addresses as entered in his books. R.S.O. 1970, c. 274, s. 161.

Notice of
final
decision

152. Any party to a proceeding is entitled on payment of the prescribed fee to a certified copy of any order or judgment, and the copy shall show the date of the entry of the order or judgment in the books of the Commissioner. R.S.O. 1970, c. 274, s. 162.

Certified
copies

153. Where a certified copy of a final decision of a recorder has been filed in the office of the Registrar of the Supreme Court under section 19 of the *Statutory Powers Procedure Act*, the Commissioner or the court or a judge thereof may stay proceedings therein if an appeal from the decision is brought until final disposition of the appeal. 1971, c. 50, s. 58 (17).

Stay of
proceedings

R.S.O. 1980,
c. 484

154. Where not otherwise provided, an appeal lies to the Divisional Court from any decision of the Commissioner, including an order dismissing a matter or proceeding under section 143. R.S.O. 1970, c. 274, s. 163.

Appeal to
Divisional
Court

155.—(1) Except in the case of a reference under section 129 or the *Arbitrations Act*, the order or judgment of the Commissioner is final and conclusive unless, where

Time for
appeal

R.S.O. 1980,
c. 25

an appeal lies, it is appealed from within fifteen days after the filing thereof in accordance with section 150, or within such further period of not more than fifteen days as the Commissioner or a judge of the Divisional Court may allow.

Notice of
appeal

(2) The appeal shall be begun by filing a notice of appeal with the recorder with whom the order or judgment appealed from is filed under section 150 or, where section 16 applies, with the Deputy Minister, paying to him the prescribed fee and filing the notice of appeal with the Registrar of the Supreme Court and, unless the notice of appeal is filed with the Registrar of the Supreme Court and a certificate of such filing is lodged with the recorder or Deputy Minister within five days after the expiration of such fifteen days, or any further time allowed under subsection (1), the appeal shall be deemed to be abandoned.

Transmission
of documents

(3) The recorder or, where section 16 applies, the Deputy Minister shall, forthwith after the filing of the notice of appeal and payment of the prescribed fee, transmit by registered mail or by express to the office of the Registrar of the Supreme Court, Toronto, the order or judgment appealed from and all the exhibits, papers and documents filed therewith.

Extension
order

(4) Where the time for appealing is extended under subsection (1), the appellant shall forthwith transmit the order for the extension or a duplicate thereof by registered mail to the recorder, or where section 16 applies, to the Deputy Minister.

Practice

(5) The practice and procedure on an appeal including the form of notice of appeal, service of the notice of appeal on the parties, and the disposition of costs on an appeal, shall be governed by the rules of court. 1971, c. 50, s. 58 (18).

Judicial
review
R.S.O. 1980,
c. 224

156.—(1) No proceedings by way of an application for judicial review under the *Judicial Review Procedure Act*, or, except in proceedings provided for under this Act, by way of other proceedings whatsoever, may be brought to call into question,

- (a) any decision made or purporting to have been made by a recorder under this Act, more than thirty days after entry of the decision by the recorder in the books of his office;

- (b) any order or judgment given or made or purporting to have been given or made by the Commissioner under this Act, more than thirty days after filing of the order or judgment of the Commissioner in accordance with section 150; or
- (c) the validity of any act or thing done or purporting to have been done under this Act by the recorder or by any other officer appointed under this Act, more than thirty days after the time when such act or thing was done.

(2) Notwithstanding anything in the *Judicial Review Procedure Act*, no court may extend any limitation of time fixed in subsection (1). 1971, c. 50, s. 58 (19). No extension of time
R.S.O. 1980, c. 224

157. Where the validity of a proceeding before the Commissioner or a recorder is called into question in any court on the ground of any defect of form or substance or failure to comply with this Act or the regulations, notwithstanding that such defect or failure is established, the court shall not, if no substantial wrong or injustice has been thereby done or occasioned, invalidate the proceeding by reason thereof, but shall confirm the proceeding, and, upon such confirmation, the proceeding shall be and be deemed to have been valid and effective from the time when it would otherwise have been effective but for such defect or failure. 1971, c. 50, s. 58 (20). Defects in form

158. Where power is conferred by this Act to extend the time for doing an act or taking a proceeding, unless otherwise expressly provided, the power may be exercised as well after as before the expiration of the time allowed or prescribed for doing the act or taking the proceeding. R.S.O. 1970, c. 274, s. 167. Power to extend time

159. Where the time limited for any proceeding or for the doing of anything in an office of a mining recorder or an office of the Commissioner or an office of the Minister or Deputy Minister expires or falls upon a Saturday, the time so limited extends to and the thing may be done on the day next following that is not a holiday. R.S.O. 1970, c. 274, s. 168. Time expiring on a Saturday

PART IX

OPERATION OF MINES

160. In this Part,

Interpretation

- (a) "engineer" means a member of the Association of Professional Engineers of the Province of Ontario who is

designated by the Ministry of Labour as “chief engineer” or as “district mining engineer”, or as “district electrical-mechanical engineer”;

- (b) “manager” means the owner of a mine or plant or a part thereof or his agent, or a person designated by the owner or his agent as responsible for the control, management and direction of a mine, plant or a part thereof;
- (c) the noun “mine” includes any opening or excavation in, or working of the ground for the purpose of winning, opening up or proving any mineral-bearing substance, and any ore body, mineral deposit, stratum, rock, earth, clay, sand or gravel; or place where mining is or may be carried on and also any quarry, excavation or opening in the ground made for the purpose of searching for or removal of mineral, rock, stratum, earth, clay, sand or gravel, and any premises below or above ground belonging to or used in connection with the mine not included in the definition of the noun “plant”;
- (d) the verb “mine” and the word “mining” mean the performance of any work in or about a mine;
- (e) the noun “plant” includes any roasting or smelting furnace, concentrator, mill or place and work used for or in connection with washing, crushing, grinding, sifting, reducing, leaching, roasting, smelting, refining, treating or research on any substance included under the noun “mine” and all ways, works, machinery, buildings and premises above ground used in connection therewith. R.S.O. 1970, c. 274, s. 169 (1); 1976, c. 79, s. 12 (1).

REHABILITATION OF TAILINGS DISPOSAL AND PLANT AREAS

Stabilization
of tailings
areas

161.—(1) The mine manager shall plant and maintain vegetation, or otherwise stabilize the tailings areas which will not be required for future impoundment of tailings to the satisfaction of the district engineer of mines.

Idem

(2) At least one year prior to cessation of operation, the mine manager shall submit to the district engineer of mines, two copies of a plan showing,

- (a) the extent of the tailings area on which planting of vegetation or stabilization must still be completed; and
- (b) the rehabilitation that is to be done in the mine or plant area, together with descriptive information.

(3) The rehabilitation work mentioned in subsection (2) shall be completed to the satisfaction of the chief engineer of mines. R.S.O. 1970, c. 274, s. 176 (1-3). Idem

(4) A bond or security deposit in an amount considered necessary by the chief engineer of mines to complete the rehabilitation mentioned in subsection (2) shall be deposited with the Ministry of Natural Resources. R.S.O. 1970, c. 274, s. 176 (4); O. Reg. 57/81. Bond

(5) Where a mine has been abandoned or where the work in it has been discontinued, the owner or lessee or any other person interested in the mineral of the mine shall cause the top of any shaft or raise opening to the surface to be solidly bulkheaded with reinforced concrete at bedrock or on top of the concrete collar of such opening, except that where in the opinion of the district mining engineer this is impracticable, the requirements of subsection (2) apply. Protection of unused workings

(6) All other openings and pits, dangerous by reason of their depth or other conditions, shall be and shall be kept securely fenced or otherwise protected against inadvertent access to the satisfaction of the district mining engineer, but where in his opinion the mine or workings present no greater hazard than the natural topographic features of the area, this provision need not be complied with. All other openings and pits

(7) Every such person who, after notice in writing from the district mining engineer, fails to comply with his directions as to such fencing or protection within the time specified in the notice is guilty of an offence against this Act. R.S.O. 1970, c. 274, s. 176 (5-7). Failure to erect fence after notice

(8) Where the district mining engineer finds that any such fencing or protection is required in order to avoid danger to health or property, he may cause the work to be done and may pay the costs incurred out of any moneys provided for the purposes of this Act, and the amount of such costs with interest thereon is a lien upon the mine or mining work of which notice in such form as the Minister of Natural Resources may prescribe may be registered in the proper land registry office, and no further transfer or other dealings with the mine or mining work shall take place until such amount is paid. R.S.O. 1970, c. 274, s. 176 (8); O. Reg. 57/81. When engineer may erect fence

(9) The amount of such costs with interest thereon is due from the owner or lessee to the Crown and is recoverable at the suit of the district mining engineer in any court of competent jurisdiction. R.S.O. 1970, c. 274, s. 176 (9). Recovery of costs of work

Discharge
of fencing
liens

(10) Notwithstanding subsections (8) and (9), the Minister of Natural Resources, either without payment or on such terms and conditions as he considers proper, may cause a cessation of charge to be registered in the proper land registry office, and thereupon the lien registered under subsection (8) is void and of no effect. R.S.O. 1970, c. 274, s. 176 (10); O. Reg. 57/81.

BRINE WELLS

Interpre-
tation

162.—(1) In this section,

- (a) “brine well” means a hole or opening in the ground for use in brining;
- (b) “brining” means the extraction of salt in solution by any method.

Permit to
bore or drill
a brine well

(2) No person shall drill or bore a brine well except under the authority of a permit in writing issued by the chief engineer upon application therefor in the prescribed form.

Permits
not issued

(3) A permit shall not be issued,

- (a) to authorize a person to drill or bore a brine well on property in which he does not own, hold or lease, or is not otherwise entitled to, the mining rights; or
- (b) where the proposed brine well is nearer the boundary of such property than 500 feet.

Location of
brine well

(4) The chief engineer may reduce or extend the distance referred to in clause (3) (b) where in his opinion it is advisable to do so and shall notify the applicant of any such reduction or extension within thirty days from the date upon which the application for the permit is filed.

Condition
of permit

(5) A permit is subject to the condition that the brine well in respect of which it is issued is bored or drilled in the location described in the permit.

Time for
issuance of
permit

(6) A permit shall be issued or refused within thirty days from the date on which the application therefor is filed, except that, where notice has been given by the chief engineer under subsection (4), the permit shall be issued upon the receipt by the chief engineer of the applicant's consent thereto.

Log of
drilling
operations

(7) Where a person drills or bores a brine well, he shall forward a log of the drilling or boring in the prescribed form in duplicate to the chief engineer within thirty days of

the completion of the drilling or boring operations, and, upon his request in writing, the log shall be confidential for a period of six months.

(8) A person boring or drilling a brine well shall take such reasonable measures as are necessary to control the infiltration of water from one horizon to any other horizon that may be penetrated during the drilling or boring operations. ^{Protection of water horizons}

(9) All brine wells shall be cased and equipped so as to reasonably ensure against the uncontrolled flow of oil, natural gas, brine or water. ^{Protection of deposits}

(10) Casing and equipment shall be in good condition and of a thickness and strength adequate to withstand any fluid pressure to which they might normally be subjected. ^{Standard of casing and equipment}

(11) Where practicable, all brine wells shall be plugged by the person operating them, before being abandoned, in a manner that will, ^{Plugging of abandoned wells}

(a) reasonably ensure that salt horizons and potential oil or natural gas producing horizons are protected; and

(b) retain water and brine in their original formations.

(12) Before commencing to plug a brine well, the person proposing to carry out the plugging operations shall report the particulars thereof to the chief engineer in the prescribed form. ^{Report of proposed plugging}

(13) Where a person plugs a brine well, he shall forward a record of the plugging in the prescribed form in duplicate to the chief engineer within thirty days of the completion of the plugging operations. R.S.O. 1970, c. 274, s. 611. ^{Record of plugging operations}

STATISTICAL RETURNS

163.—(1) For the purpose of their tabulation, under the instruction of the Minister, the owner, agent or manager of every mine, plant, pit, quarry or other works to which this Act applies shall, on or before the 31st day of March in every year, send to the Ministry on the forms supplied a correct return for the year that ended on the 31st day of December next preceding, showing the number of persons ordinarily employed below and above ground respectively, the total amount of wages paid during the year, the quantity in standard weight of the minerals dressed and of the undressed ^{Statistical returns}

mineral that has been sold, treated or used during such year, and the value or estimated value thereof, and such other particulars as the Minister by regulation prescribes. R.S.O. 1970, c. 274, s. 616 (1); 1972, c. 1, s. 1.

Monthly or
quarterly
returns

(2) The owner, agent or manager of every metalliferous mine shall, if required, make a similar return for the month or quarter at the end of each month or quarter of the calendar year.

Offence

(3) Every owner, agent or manager of a mine, plant, pit, quarry or other works who fails to comply with this section, or makes a return that is to his knowledge false in any particular, is guilty of an offence against this Act. R.S.O. 1970, c. 274, s. 616 (2, 3).

PART X

REFINERY PROVISIONS

Interpre-
tation

164. In this Part, "refinery" means apparatus or equipment that may be used for the refining, retorting, smelting, assaying or treating by any other method of any ore, mineral or substance for the purpose of recovering or determining the quantity of gold, platinum, silver or any other precious metal therefrom or therein. R.S.O. 1970, c. 274, s. 621.

Refinery
licence

165. No person shall own, operate, use or have a refinery in his possession, under his control or upon any property of which he is the owner, licensee, lessee or tenant unless a refinery licence has been granted in respect of such refinery, except that no refinery licence shall be required in respect of a refinery for which a certificate of exemption has been issued. R.S.O. 1970, c. 274, s. 622.

Powers of
Minister as
to refinery
licences

166.—(1) The Minister may,

- (a) issue and renew refinery licences and certificates of exemption;
- (b) refuse to issue or renew a refinery licence or certificate of exemption, or suspend, cancel or revoke a refinery licence or certificate of exemption for any reason that he considers sufficient in the public interest;
- (c) prescribe the forms of refinery licences, certificates of exemption, applications therefor and renewals thereof; and

- (d) prescribe the fee payable upon the issue and renewal of refinery licences and certificates of exemption.

(2) Every refinery licence and certificate of exemption expires on the 31st day of March next following the issue thereof and every renewal of a refinery licence or certificate of exemption expires on the 31st day of March next following the expiration of the refinery licence or certificate of exemption or the last renewal thereof. R.S.O. 1970, c. 274, s. 623.

Term of licence and certificate of exemption

167.—(1) Before refusing to renew, or suspending, cancelling or revoking a refinery licence or certificate of exemption under section 166, the Minister shall refer the matter to a person appointed by him for a hearing and report.

Reference for hearing and report

(2) Where a matter is referred by the Minister under subsection (1), the person appointed shall hold a hearing as to whether the refinery licence or certificate of exemption to which the hearing relates should be renewed or should be suspended, cancelled or revoked, as the case may be, and the licensee or certificate holder and such other persons as the person holding the hearing may specify are parties to the hearing.

Hearing

(3) Sections 6 to 16 and sections 21, 22 and 23 of the *Statutory Powers Procedure Act* apply in respect of a hearing under this section.

Application of R.S.O. 1980, c. 484

(4) The person holding a hearing under this section shall, at the conclusion of the hearing, make a report to the Minister setting out his findings of fact and any information or knowledge used by him in reaching his recommendations, any conclusions of law he has arrived at relevant to these recommendations, and his recommendations as to the renewal, suspension, cancellation or revocation of the refinery licence or certificate of exemption, as the case may be, and shall send a copy of his report to the licensee or certificate holder to whom it relates.

Report

(5) After considering a report made under this section, the Minister shall thereupon decide whether or not to refuse to renew or to suspend, cancel or revoke the refinery licence or certificate of exemption to which the report relates, and shall give notice of his decision to the licensee or certificate holder specifying the reasons therefor. 1971, c. 50, s. 58 (21).

Decision of Minister

168.—(1) A certificate of exemption may be issued in respect of a refinery where the Minister is satisfied that the

Certificate of exemption

refinery is not maintained or used for the refining, retorting, smelting, assaying or treating of any ore, mineral or substance for the purpose of recovering or determining the quantity of gold, platinum, silver or any other precious metal therefrom or therein or is used only for educational purposes.

Use of
refinery

(2) No person who owns or has in his possession, under his control or upon any property of which he is the owner, licensee, lessee or tenant a refinery in respect of which a certificate of exemption has been issued shall permit the refinery to be operated or used nor shall he or any other person operate or use the refinery for the refining, retorting, smelting, assaying or treating of any ore, mineral or substance for the purpose of recovering or determining the quantity of gold, platinum, silver or any other precious metal therefrom or therein. R.S.O. 1970, c. 274, s. 624.

Offence

169. Every person who contravenes any of the provisions of this Part is guilty of an offence and on conviction is liable to a fine of not less than \$10 and not more than \$500 or to imprisonment for a term of not more than one year, or to both. R.S.O. 1970, c. 274, s. 625.

Application
of Part

170. This Part applies notwithstanding that the owner or operator of a refinery is the holder of a licence issued under any Act. R.S.O. 1970, c. 274, s. 626.

Inquiry of
complaints

171. The Minister may appoint any person to conduct an inquiry into any charge or complaint that a person has contravened any of the provisions of this Part or into any matter or thing connected with or arising out of the operation of this Part, and such person, for the purposes of the inquiry, has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act. 1971, c. 50, s. 58 (22).

R.S.O. 1980,
c. 411

PART XI

OFFENCES, PENALTIES AND PROSECUTIONS

Offences

172.—(1) Every person who,

- (a) prospects, occupies or works any Crown lands or mining rights for minerals otherwise than in accordance with this Act;
- (b) performs or causes to be performed on any Crown lands, or on any lands where the mining rights are in the Crown, any boring by diamond or other

core drill for the purpose of locating valuable mineral in place, except where such Crown lands or mining rights have been staked out and recorded as a mining claim in accordance with this Act;

- (c) wilfully defaces, alters, removes or disturbs any post, stake, picket, boundary line, figure, writing or other mark lawfully placed, standing or made under this Act;
- (d) wilfully pulls down, injures or defaces any rules or notices posted up by the owner, agent or manager of a mine or plant;
- (e) wilfully obstructs the Commissioner or any officer appointed under this Act in the execution of his duty;
- (f) being the owner or agent of a mine, refuses or neglects to furnish to the Commissioner or to any person appointed by him or to any officer appointed under this Act the means necessary for making an entry, inspection, examination or inquiry in relation to a mine under this Act, other than Part IX;
- (g) unlawfully marks or stakes out in whole or in part a mining claim, a placer mining claim, or an area for a boring permit;
- (h) wilfully acts in contravention of this Act, other than Part IX or Part X, in any particular not hereinbefore set forth;
- (i) wilfully contravenes any provision of this Act or any regulation for the contravention of which no other penalty is provided;
- (j) wilfully makes any material change in the wording or numbering of a prospector's licence after its issue; or
- (k) attempts to do any of the acts mentioned in the foregoing clauses,

is guilty of an offence against this Act and on conviction is liable to a fine of not more than \$20 for every day upon which the offence occurs or continues. R.S.O. 1970, c. 274, s. 628(1); 1972, c. 116, s. 23.

False
statements

(2) Every person who knowingly makes a false statement in an application, certificate, report, statement or other document filed or made as required by or under this Act or the regulations is guilty of an offence and on conviction is liable to a fine of \$500 or to imprisonment for a term of not more than six months, or to both. R.S.O. 1970, c. 274, s. 628 (2).

Smelters

173.—(1) No person shall construct or cause to be constructed a plant for the smelting, roasting, refining or other treatment of ores or minerals that may result in the escape or release into the open air of sulphur, arsenic or other fumes in quantities that may injure trees or other vegetation unless and until the site of the plant has been approved by the Lieutenant Governor in Council.

Offence

(2) Every person who constructs or causes to be constructed a plant for the smelting, roasting, refining or other treatment of ores or minerals without the approval of the Lieutenant Governor in Council and sulphur, arsenic or other fumes escape or are released therefrom into the open air and injure trees or other vegetation is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 for every day upon which such fumes escape or are released therefrom into the open air. R.S.O. 1970, c. 274, s. 629.

Disobeying
order or
award of
Commis-
sioner

174. Every person who wilfully neglects or refuses to obey any order or award of the Commissioner, except for the payment of money, is, in addition to any other liability, liable to a fine of not more than \$250 and, upon conviction thereof, is liable to imprisonment for a term of not more than six months unless the fine and costs are sooner paid. R.S.O. 1970, c. 274, s. 630.

Use of word
"Bureau"
prohibited

175.—(1) No person who,

- (a) carries on the business of mining or dealing in mines, mining claims, mining lands, or mining rights, or the shares, stocks, or bonds of a mining company; or
- (b) acts as broker or agent in or for the disposal of mines, mining claims, mining lands, or mining rights, or of any such shares, stocks or bonds; or
- (c) offers or undertakes to examine or report on a mine, mining claim, mining land or mining rights,

shall use the word "Bureau" as the name or title or part of the name or title under which he acts or carries on business.

(2) Every person who contravenes any of the provisions of this section is guilty of an offence and on conviction is liable to a fine of not more than \$20 for every day upon which the offence occurs or continues. R.S.O. 1970, c. 274, s. 631. Offence

176.—(1) In this section, the noun "mine" includes "plant" as defined in Part IX. Interpretation

(2) An owner, agent or other person who contravenes any provision of Part IX is guilty of an offence and on conviction is liable to a fine of not more than \$1,000. R.S.O. 1970, c. 274, s. 632 (1, 2). Penalty for offence against Part IX

(3) Where the Deputy Minister of Labour or an engineer has given written notice to an owner or agent or a person engaged or employed in or about a mine that an offence has been committed against Part IX, such owner or agent or other person is liable on conviction to a further fine of not more than \$100 for every day upon which the offence continues after such notice. R.S.O. 1970, c. 274, s. 632 (3); 1976, c. 79, s. 12 (2). Additional penalty for continuing offence

(4) An owner, agent or other person is, upon conviction, liable to imprisonment for a term of not more than three months unless the fine and costs are sooner paid. Imprisonment

(5) Where the offence is one that might have endangered the safety of those employed in or about the mine or caused serious personal injury or a dangerous accident, and was committed wilfully by the personal act, default or negligence of the accused, every person who is guilty of an offence against Part IX is, in addition to or in substitution for any fine that may be imposed, liable on conviction to imprisonment for a term of not more than three months. R.S.O. 1970, c. 274, s. 632 (4, 5). Imprisonment of offender against Part IX in certain cases

177.—(1) No prosecution shall be instituted for an offence against Part IX or Part X or any regulation made in pursuance thereof except, Instituting prosecutions for offences

(a) by an engineer;

(b) by direction of the county or district Crown attorney; or

(c) by the leave in writing of the Attorney General,

or for an offence against any other provision of this Act or of any regulation made in pursuance thereof except,

(d) by or by leave of the Commissioner or a recorder;

(e) by direction of the county or district Crown attorney; or

(f) by leave of the Attorney General. R.S.O. 1970, c. 274, s. 633 (1); 1972, c. 1, s. 9 (7).

When person
not actual
offender not
liable

(2) No person not being the actual offender is liable in respect of such offence if he proves that he did not participate in the contravention of the provision for a breach of which he is charged and that he was not to blame for the breach and that according to his position and authority he took all reasonable means in his power to prevent the breach and to secure compliance with Part IX or Part X.

Procedure on
prosecutions

178. Except as to offences against section 12, every prosecution for an offence against or for the recovery of a penalty imposed by or under the authority of this Act shall take place before a provincial offences court or before the Commissioner, and, save as herein otherwise provided, the *Provincial Offences Act* applies to every such prosecution. R.S.O. 1970, c. 274, s. 634.

R.S.O. 1980,
c. 400

PART XII

ENLISTMENT FOR ACTIVE SERVICE

Application
of Part

179. All other provisions of this Act are subject to the provisions of this Part. R.S.O. 1970, c. 274, s. 635.

Prospector's
licence of
enlisted
licensee

180. The prospector's licence of a person who has enlisted or enrolled for active service at home or abroad against the Queen's enemies shall be deemed to be subsisting and in force until six months after the date of his discharge from such service, or the 31st day of March following such date of discharge, whichever is the later date. R.S.O. 1970, c. 274, s. 636; 1972, c. 116, s. 24.

Effect of
enlistment
on forfeiture

181.—(1) Subject to subsections (2), (3) and (4), forfeiture or loss of rights under subsection 85 (1), except clauses 85 (1) (a) and (b), is avoided if the recorded holder of an interest in a mining claim has enlisted or enrolled for active service at home or abroad against the Queen's enemies.

(2) In the case of non-performance of work, the period ^{Performance of work} currently to be performed at the date of enlistment shall be performed not later than one year from the date of discharge from active service, two years from such date in the case of the next succeeding period, three years from such date in the case of a second succeeding period, four years from such date in the case of a third succeeding period and five years from such date in the case of a fourth succeeding period.

(3) Where all the work required to be performed upon a ^{Application for patent} claim has been performed prior to the date of enlistment, application for a patent or lease shall be applied for not later than one year from the date of discharge from active service.

(4) The report required by subsection 76 (3) shall be made not ^{Filing report} later than ten days after the expiration of the time permitted for the performance of the work by this section.

(5) Where the recorded holder has enlisted or enrolled ^{Where recorded holder on active service} for active service and subsequently transfers his interest, subsections (2), (3) and (4) apply with necessary modifications to the transferee, but the time for performing work and making application for patent or lease shall be computed from the date of such transfer. R.S.O. 1970, c. 274, s. 637.

182.—(1) Where the applicant for a patent or lease ^{Purchase money or rental} of a mining claim is a person who enlisted or enrolled for active service at home or abroad against the Queen's enemies, he shall not be required to pay the purchase money or the first year's rental, as the case may be, but, where he is not the sole applicant, this exemption applies only to a part of the purchase money or the first year's rental, as the case may be, that is in proportion to his interest in the claim.

(2) In the case of each person who has enlisted or ^{Section not to apply to more than three claims} enrolled for active service this section applies to not more than three claims whether or not he is the sole owner thereof, and the area of each claim shall not exceed the area prescribed in section 42.

(3) The exemptions provided by this section apply to ^{Section to apply to personal representatives and beneficiaries} the personal representatives or beneficiaries of a person coming under subsection (1). R.S.O. 1970, c. 274, s. 638.

183. Sections 180 to 182 apply only,

Where
ss. 180-182
apply

- (a) where the ownership or interest in a mining claim of a person on war service was acquired prior to the time such person enlisted or enrolled for active service; and
- (b) where the recorder of the mining division in which the claims are situate has notice that the holder of such claims or of an interest therein has enlisted or enrolled for active service. R.S.O. 1970, c. 274, s. 639.

Interpre-
tation
R.S.O. 1970,
c. N-4

184. In this Part, "active service" means active service as determined under the *National Defence Act* (Canada). R.S.O. 1970, c. 274, s. 640.

PART XIII

GENERAL PROVISIONS

LIEN FOR WAGES

Application of
R.S.O. 1980,
c. 261

185.—(1) Except as provided in this Act, the *Mechanics' Lien Act* applies to mines, mining claims, mining lands and works connected therewith.

Registration
of lien

(2) Where the lands and mining rights have not been patented, the registration provided for in the *Mechanics' Lien Act* shall be in the office of the recorder.

Lien
where claim
for wages

(3) When the claim is for wages in connection with a mine, mining claim, mining lands or works connected therewith, in addition to the rights and remedies afforded by the *Mechanics' Lien Act*, the claimant has a lien upon any other property of the owner in or on such mine, mining claim, mining land or works for a sum not exceeding thirty days wages, and this claim may be enforced under such Act.

Cancellation
of claim

(4) When the Commissioner is satisfied that a claim for lien recorded as provided in this section is not made in good faith or is made for some improper purpose or where the owner is unduly embarrassed thereby, he may make an order cancelling the lien upon such terms as to security or otherwise as he deems proper.

Lien on
unpatented
lands

(5) A lien upon unpatented lands does not affect the rights of the Crown. R.S.O. 1970, c. 274, s. 641.

PRESERVATION OF PEACE

186. The Lieutenant Governor in Council may declare by proclamation that *The Public Works Peace Preservation Act*, being chapter 36 of the Revised Statutes of Ontario, 1914, to be in force in any mining division or in any defined locality therein, and upon and after the date named in the proclamation section 1 and sections 3 to 9 of that Act take effect within the mining division or locality designated in the proclamation, and that Act applies to all persons employed in any mine or in mining within the limits of such mining division or locality in the same manner and to the same extent as nearly as may be as if the persons so employed had been specially mentioned and referred to in such Act. R.S.O. 1970, c. 274, s. 642.

Powers of
Lieutenant
Governor in
Council
R.S.O. 1914,
c. 36

EXPLORATORY DRILLING

187. The Minister may, out of the moneys that are appropriated by the Legislature for the purpose, purchase such diamond drills as he considers necessary for use in prospecting for ore or minerals under regulations made by the Lieutenant Governor in Council, which may provide,

Purchase
of drills for
prospecting
purposes

- (a) for the control and working of the drills under the direction of a person employed for the purpose by the Ministry;
- (b) for the payment of freight charges where the drills are used upon mines or land other than those owned by the Crown;
- (c) as to applications for use of the drills and the method of dealing therewith;
- (d) as to charges for use of the drills and for damages thereto, or wear and tear connected therewith,

and otherwise as the Lieutenant Governor in Council considers proper. R.S.O. 1970, c. 274, s. 643; 1972, c. 1, s. 1.

188. The Minister, out of the moneys that are appropriated by the Legislature for the purpose, may establish, maintain and operate assaying and testing laboratories for sampling, assaying, testing, analysing or determining rocks, ores, minerals and other substances. R.S.O. 1970, c. 274, s. 644.

Assaying
and testing
laboratories

RIGHTS AND EASEMENTS

Rights over
other lands
that may be
conferred by
Commissioner

189.—(1) Where required for or in connection with the proper working of a mine, mill for treating ore or quarry, the owner, lessee or holder of it or the person entitled to work it may, subject as hereinafter provided, obtain and have vested in him by order of the Commissioner, made after hearing such parties interested as appear or on appeal from him,

- (a) the right to open, construct, put in, maintain and use ditches, tunnels, adits, pipes, conduits, flumes and other works through, over or upon any land for the drainage, conveyance or passage of water;
- (b) the right to discharge water upon any land or by, through or into any existing means of drainage whether natural or artificial;
- (c) the right to drain off, lower or divert the water of any lake, pond, river, stream or watercourse, or any other water, notwithstanding that the water or part thereof may be on the land of or owned by any other person or that any other person may have rights or interests in or to such water or the use thereof;
- (d) the right to collect and dam back water, notwithstanding that it may overflow other land;
- (e) the right to take or divert and use for or in connection with the working of his own mine or quarry and bring thereto for such use any specified water, and to construct and maintain dams and other works and do all other things necessary or convenient therefor;
- (f) rights of way or passage through or over any land or water, and the right to construct, improve, maintain and use suitable roads, tramways, aerial tramways, channels, waterways, passages and other means of transit and transportation upon, through or over any land or water, together with such other rights of entry upon and use of land and water as may be necessary or convenient therefor;
- (g) the right to transmit electricity or any other kind of power, or have it transmitted, through or over any land or water in any form or manner and to do everything necessary or convenient therefor;

- (h) the right to enter upon and use for or in connection with the working of his own mine or quarry a specified area of other land;
- (i) the right to deposit tailings, slimes or other waste products upon any land, or to discharge the same into any water, the effects of such deposit or discharge not being injurious to life or health.

(2) No such right shall be granted unless any injury or ^{Compensation} damage caused to any other person thereby can be adequately compensated for, nor unless in all the circumstances it seems reasonable and fitting to grant the right, nor until, in the case where injury or damage has already been suffered, compensation has been determined by the Commissioner, and the amount thereof paid, and in the exercise of any right so granted no unnecessary injury or damage shall be done to the land, property, rights or interests of other persons, and all injury and damage that may be caused to any person by the granting and exercise of any right obtained under this section shall be fully compensated for.

(3) The order granting the right shall fix such ^{How fixed} compensation, or shall provide for the ascertainment thereof, and shall contain any provisions that are considered proper for securing the same and for protecting the rights and interests of any person whose land, property, rights or interests are affected or endangered, and, if considered proper, may require the applicant to make grants or concessions to or construct works or do any other thing for, or for the benefit of, any such person or his land or property, and such order may in all cases be upon such terms, and may grant the right upon such conditions and for such time as are considered proper.

(4) In every application for such an order, the applicant, ^{Material to be filed on application} in addition to anything else required or directed, shall file in duplicate with the Commissioner a clear and precise statement of the right or rights being applied for, of the land or property affected and the owner or owners thereof so far as they can be ascertained, a map or plan of the locality showing the land and water involved, and definite and detailed plans and specifications of the works or things proposed to be constructed or done and, for the purpose of preparing the same, the Commissioner may authorize the applicant, his engineers and assistants to enter upon the land of any other person and make such examinations and measurements as may be necessary, and such statement, map or plan and plans and specifications may, by order,

be amended or altered or modified at any stage of the proceedings and the Commissioner may give directions as to the notice to be given to the parties interested, the time and manner of service and the particulars to be furnished to such parties respectively.

Rights
conferred to
run with
lands

(5) This section applies to and against all patented and unpatented lands and the word "lands" in this section includes any right or interest in lands.

Idem

(6) Subject to any change therein or rescission thereof by subsequent order of the Commissioner, all rights and benefits created by any order of the Commissioner heretofore or hereafter made under this section run with and are appurtenant and incident to the lands thereby benefitted and all burdens and obligations created or imposed by any such order run with and are binding on all lands in respect of which they were created or imposed and such order continues valid and binding in respect of all lands thereby affected notwithstanding forfeiture thereof by the Crown or sale thereof because of unpaid taxes, it being expressly declared that the Crown or any municipality or any person acquiring such land is bound by such order in the same manner and to the same extent as the owner thereof at the time such order was made.

Idem

(7) Every such order shall contain proper descriptions of the lands thereby benefitted and of all other lands thereby affected sufficient for purposes of registration, and there shall be attached thereto a plan or plans showing clearly the lands thereby benefitted and all other lands thereby affected.

Notice

(8) Notice of hearing of all applications under this section shall be given to the Minister in the same manner as notice to any other interested person.

Copy to be
filed with
Minister

(9) A copy of every order made under this section, certified to be a true copy under the hand and seal of the Commissioner, shall be immediately filed by the applicant with the Minister and in the office of the recorder of the division in which the lands affected are situate, and, if any patented lands are thereby affected, a copy of such order so certified shall be filed in the land registry office for the district in which the lands are situate.

Particulars
to be entered

(10) The recorder or land registrar, as the case may be, shall enter particulars of such order against the titles of the lands thereby affected. R.S.O. 1970, c. 274, s. 645 (1-10).

(11) Where unpatented mining claims affected by any such order are subsequently patented or leased, a copy of such order so certified shall be sent to the proper land registry office by the Ministry with the grant or lease. R.S.O. 1970, c. 274, s. 645 (11); 1972, c. 1, s. 1.

(12) Unless such order is so filed in the land registry office for the district in which the lands are situate, a purchaser for value without notice of patented lands affected by any such order is not bound thereby.

(13) The Commissioner, for good cause shown and on such terms as seem just, may by subsequent order or award at any time change, supplement, alter, vary or rescind any order made under the authority of this section.

(14) Rights granted under this section shall not be exercised until the time for appealing from the order granting the rights has expired or, where an appeal is entered, until the appeal is disposed of, but from and after such time, subject to any restriction or postponement provided for in the order, the person to whom any such right is granted may enter upon any land or property and exercise the right so granted, and any person who after such time obstructs the exercise of any such right or wilfully neglects or refuses to obey any order made under this section is guilty of an offence against this Act and, in addition to any other liability, is liable on conviction to a fine of not more than \$250 for each day such obstruction, neglect or refusal continues. R.S.O. 1970, c. 274, s. 645 (12-14).

REGULATIONS

190.—(1) The Lieutenant Governor in Council may make regulations for,

- (a) the opening, construction, maintenance and use of roads to, through or over mining claims, mining locations or lands heretofore or hereafter sold or granted as mining lands or recorded as mining claims or locations, and for the opening, construction, maintenance and use of ditches, aqueducts or raceways through, over or upon such claims, locations or land for the conveying and passage of water for mining purposes;
- (b) to meet cases that may arise for which no provision is made in this Act, or when he considers the provision made to be ambiguous or doubtful;

- (c) the imposition of penalties of not more than \$200 or of not more than three months imprisonment for the contravention of any such regulations. R.S.O. 1970, c. 274, s. 646 (1); 1971, c. 50, s. 58 (23).

Minister
may issue
licence,
lease or
patent

(2) Notwithstanding anything in this Act, in special circumstances the Minister may, subject to the approval of the Lieutenant Governor in Council, issue a licence of occupation, lease or patent of any mining lands or mining rights on such terms and conditions as he considers expedient. R.S.O. 1970, c. 274, s. 646 (2).

Transmission
of electricity
in mining
division and
entering
on lands
without
consent of
owner

191. With the consent of the Lieutenant Governor in Council and on such terms as the Lieutenant Governor in Council sees fit, any company authorized to supply electrical power or energy or compressed air, or both, may from time to time construct, maintain and operate transmission lines, air pipe lines, substations and other conveniences for the transmission of electrical power or energy or compressed air, or both, in and through any mining division, and for any of such purposes may enter upon, take and use any mining lands or any privilege or easement required by such company for such purposes without the consent of the owner thereof, but subject to the payment of such compensation or annual rent for the privilege or easement required and authorized as is determined by the Lieutenant Governor in Council, and the Lieutenant Governor in Council may from time to time revoke or vary the terms upon which any right conferred under this section may be exercised. R.S.O. 1970, c. 274, s. 647.

FEEES

Fees

192. Fees are payable under this Act in accordance with the tariff in the Schedule and, except as otherwise mentioned, are for the use of the Province of Ontario. R.S.O. 1970, c. 274, s. 648.

No fee to
record order
upon
direction of
Commissioner

193.—(1) Notwithstanding section 192, where an order is made by the Commissioner or on appeal from his decision, and it is in the public interest that the order be recorded, and where the order would not otherwise be recorded, the Commissioner may direct the mining recorder to record the order without fee.

Exception

(2) Subsection (1) does not apply to an order made under section 86 except an order dismissing an application made under that section. R.S.O. 1970, c. 274, s. 649.

CANCELLATION OF PATENTS

194. Where a patent or lease of mining lands or mining rights is by proceedings in the Supreme Court at the instance of the Crown repealed or avoided, such lands and mining rights thereupon become and are withdrawn from exploration, discovery, staking out, lease or sale, and every discovery upon and claim to such lands or mining rights and to the mines or minerals on, in or under such lands made or existing at any time before the repeal or avoidance of the patent or lease become and are void, and such lands, mining rights, mines and minerals are thenceforth vested in the Crown freed and discharged of and from every claim. R.S.O. 1970, c. 274, s. 650.

Lands and mining rights to be withdrawn from exploration on repeal of patent or lease at instance of Crown

FORFEITURE OF LEASES

195. Where lands that include surface rights revert or revest or are surrendered or forfeited under this Act or are declared to be open for disposition under this Act, such lands may be dealt with under the *Public Lands Act* or any other Act administered by the Minister or the regulations made thereunder. R.S.O. 1970, c. 274, s. 651.

Surface rights on lands forfeited or surrendered R.S.O. 1980, c. 413

DEFAULT OF CO-OWNERS, ETC.

196.—(1) In this section, “co-owner” includes co-lessee and co-licensee, and a corporation with share capital and a shareholder thereof shall be deemed to be co-owners.

Interpretation

(2) Where lands or mining rights that are subject to rents or expenditures for development work are held by two or more co-owners and all such rents or expenditures have been paid by one or more of them and the other or others has or have neglected or refused to pay his or their proportion of the rents or expenditures for a period of four or more consecutive years, the Commissioner, upon the application of any co-owner or co-owners who has or have paid the rents or met the expenditures for the period of four or more consecutive years immediately prior to the date of the application and upon the receipt of such other information and particulars as he requires, may make an order requiring the delinquent co-owner or co-owners to pay, within three months of the date of the order or such further time as the Commissioner may fix, his or their fair proportion of the rents or expenditures to the co-owner or co-owners who has or have paid all the rents or expenditures, together with interest at the rate of 6 per cent per annum compounded yearly, and such costs of the

Procedure to enforce claim for payment of rents or expenditures by one co-owner against another

application as are allowed by the Commissioner. R.S.O. 1970, c. 274, s. 652 (1, 2).

Service of
order

(3) An order made under this section shall be served in such manner as the Commissioner directs.

Dispute
as to
liability

(4) If a co-owner, upon whom an order made under subsection (1) has been served, disputes his liability to his co-owner or otherwise to make any payment under the order or the amount thereof, he may, within the time limited by the order for making the payment, apply to the Commissioner for a hearing and the Commissioner shall, after a hearing, determine the dispute and may affirm, amend or rescind the order or make such other order as he considers just, and, if the Commissioner orders that a payment be made, he may fix the time for payment thereof.

Vesting
order

(5) Where the time for payment fixed by an order made under subsection (1) has expired and no application for determination of a dispute has been made, or where the time fixed by an order made under subsection (4) has expired, and where such additional time, if any, as has been granted by the Commissioner has expired, if it is proved to the satisfaction of the Commissioner that the payment has not been made, he may make an order vesting the interest of the delinquent co-owner or co-owners in the lands or mining rights to which the payment relates in the co-owner or co-owners who has or have paid the rents or made the expenditure. 1971, c. 50, s. 58 (24).

Death of
delinquent

(6) Where a delinquent co-owner has died either before or after default in respect of his portion and no person has taken out administration of his estate or has obtained probate of his will, any order made under this section may be directed to and served upon his heirs.

Order
against
corporation

(7) An order made under this section against a corporation shall be directed to the corporation only.

Fee

(8) An application under subsection (2) shall be accompanied by a fee of \$25. R.S.O. 1970, c. 274, s. 652 (4-6).

MINERAL RIGHTS UNDER ROADS

Sale or lease
of mineral
rights under
roads

197.—(1) The corporation of any county or township in that part of Ontario lying south of the French River, Lake Nipissing and the River Mattawa, wherever minerals are found, may sell or lease, by public auction or other-

wise, the right to take minerals found upon or under any roads over which the township or county has jurisdiction, if considered expedient so to do.

(2) No such sale or lease shall take place until after due notice of the intended by-law has been posted up in six of the most public places in the immediate neighbourhood of such road for at least one month previous to the time fixed for considering the by-law.

No sale or
lease until
after notice

(3) The deed conveyance or lease to the purchaser or lessee under the by-law shall contain a proviso protecting the road for public travel and preventing any user of the granted rights that would interfere with public travel.

Sale or
lease not to
interfere
with public
travel

(4) In the remaining parts of Ontario, the mines, minerals, and mining rights in, on or under all common and public highways and road allowances are vested in the Crown, and may be sold, leased or otherwise disposed of under this Act.

In northern
part of
Province

(5) Where a mining location or any mining lands adjoin a common and public highway or road allowance and the mineral vein or deposit thereon extends into or under the highway or road allowance, its owner has the right to purchase or lease the mines, minerals and mining rights in, on or under the same, subject to this Act, or where there are mining locations or mining lands on both sides of such highway or road allowance, such rights accrue to the owner or owners on both sides thereof as respects the half of such highway or road allowance adjoining his or their lands.

Rights of
adjoining
landowners

(6) Subsections (4) and (5) do not apply to highways on lands granted before the 1st day of May, 1904 by the Crown under a predecessor of this Act, or in the grant whereof the mines and minerals were not reserved to the Crown.

Exception

(7) The patent or lease of such mines, minerals and mining rights shall contain a proviso protecting the road for public travel and preventing any user of the granted rights that would interfere with public travel unless a road in lieu thereof has been provided and accepted by the municipal corporation having control of the road.

Patent or
lease to
protect
public travel

(8) Subsections (4) to (7) do not affect any rights acquired from or any agreement made or entered into with any municipal corporation under this section prior to the 1st day of May, 1904. R.S.O. 1970, c. 274, s. 653.

Previously
acquired
rights
preserved

SURRENDER OF LANDS

Voluntary
surrender of
mining lands

198.—(1) The owner, lessee or licensee of any mining lands or mining rights granted under this Act or any other Act, may voluntarily surrender such lands or mining rights to the Crown and thereupon the Minister may cause a notice of determination to be filed in the proper land registry office.

Prospecting,
etc., on
surrendered
lands

(2) Lands or mining rights surrendered to the Crown under subsection (1) shall not be open for prospecting, staking out, sale or lease under this Act until a date fixed by the Deputy Minister, notice of which shall be published in *The Ontario Gazette* at least two weeks prior thereto. 1971, c. 102, s. 8.

FORFEITED LANDS

Lands For-
feited
to Crown
R.S.O. 1980,
cc. 95, 54,
297

199.—(1) Where mining lands or mining rights are forfeited to the Crown under the *Corporations Act*, the *Business Corporations Act* or the *Mortmain and Charitable Uses Act*, or any predecessor thereof, the Minister may cause to be registered in the proper land registry office a notice stating that forfeiture has been effected under that Act and that by reason of such forfeiture the lands or mining rights and every interest therein are forfeited to and vested in the Crown absolutely freed and discharged from every estate, right, title, interest, claim or demand therein or thereto, whether existing, arising or accruing before or after such forfeiture, and, subject to subsection (2), such lands shall be dealt with under this Act.

Opening
forfeited
lands,
etc., for
prospecting

(2) Mining lands or mining rights so forfeited are not open for prospecting, staking out, sale or lease under this Act until a date fixed by the Deputy Minister, two weeks notice of which shall be published in *The Ontario Gazette*. R.S.O. 1970, c. 274, s. 655.

TECHNICAL PROSPECTING

Licence
to prospect
by technical
methods

200.—(1) Where the Minister is satisfied that any terrain, due to the paucity of rock outcrops or for any other reason, cannot be prospected or explored for its mineral possibilities by other than geophysical or other technical methods, he may, notwithstanding anything in this Act but subject to the approval of the Lieutenant Governor in Council, issue a licence to prospect and explore any such area that he designates for base metals and minerals, other than petroleum oil and natural gas, subject to the following:

1. The licence shall be for a term of three years and may contain such conditions as the Minister considers proper.
2. The fee for the licence shall be \$1,000 payable annually during the term of the licence.
3. The area for which a licence may be issued shall be in one parcel and shall not be greater than 64,000 acres.
4. A licensee may surrender his licence at any time upon giving written notice thereof to the Minister at least thirty days before the surrender is to take effect.
5. The Minister may terminate a licence at any time if he is satisfied that the licensee has not complied with this section and the conditions of the licence.
6. Before the issue of a licence the applicant therefor shall furnish to the Minister a deposit of \$25,000 which shall be in cash or in,

(a) bearer bonds of,

(i) the Province of Ontario,

(ii) Ontario Hydro, or

(iii) the Government of Canada; or

(b) the form of a promissory note guaranteed by a chartered bank of Canada,

which shall be retained by the Minister until the licence expires or is surrendered when it shall be returned to the licensee, except that where the licensee has not complied with this section and with the conditions of the licence to the satisfaction of the Minister, the deposit is forfeited to and becomes the property of the Crown.

7. A licensee shall expend annually in geophysical, geological or other exploratory work of a similar nature, or drilling, a sum equal to \$1 per acre, but in no case shall such annual expenditure be less than \$25,000 and,
 - i. where the licensee has expended an amount in excess of the required annual expenditure, the

excess amount so expended may be credited towards the amount required to be expended in the second or following years of the licence,

- ii. where the Minister is satisfied that a *bona fide* attempt has been made by the licensee to meet the required annual expenditure, and where due to weather or other conditions beyond his control, the licensee is prevented from carrying out the work requirements, the Minister, by written order issued prior to the anniversary date of the licence, may extend the time for a period of not more than one year, provided bearer bonds acceptable to the Minister or a promissory note guaranteed by a Canadian chartered bank is deposited with the Minister equal in amount to the amount required to be expended,
 - iii. upon the required expenditure being made within the time so extended, the bearer bonds or promissory note so deposited shall be returned to the licensee,
 - iv. where the licensee fails to comply with the required expenditure within the extended time, the deposit is forfeited to and becomes the property of the Crown.
8. A plan detailing the nature of a proposed annual expenditure shall be submitted to the Minister for approval within ninety days of the date of issue or anniversary date of the licence, as the case may be, and if the plan is approved, the exploratory work shall be commenced within six months thereafter.
9. The licensee shall,
- i. within thirty days after each anniversary date of the licence, prove to the satisfaction of the Minister that he has expended the amount required in the manner provided in paragraph 7,
 - ii. within sixty days of completion submit to the Minister full reports and plans of all geological or geophysical examinations, drillings or other exploratory work, including detailed logs of all holes drilled,

- iii. correctly label all drill cores and cuttings, and
- iv. permit the Minister or his authorized agent to examine all drill cores and cuttings at any time not later than six months after the completion of the drilling. R.S.O. 1970, c. 274, s. 656 (1); 1971, c. 102, s. 9 (1, 2); 1973, c. 57, s. 19.

(2) The licensee may make application to the Minister within thirty days prior to the anniversary date of the licence for a reduction in the acreage included in the licence and the annual expenditure for the year of the term in which the surrender is made shall be based on the area of the licence at the commencement of that year of the term but the expenditure for ensuing years shall be based on the area being retained, but in no case shall such annual expenditure be less than \$25,000 and the area surrendered shall be in one block. Reduction in acreage

(3) Where the required expenditure has been made and a deposit of economic importance has been found to the satisfaction of the Minister, and the area included in the licence is reduced as provided in subsection (2), the licensee shall be entitled to apply for a lease of 10 per cent of the reduced area and not 10 per cent of the area for which the licence was originally issued and the lease issued shall be in one block. 1971, c. 102, s. 9 (3). Lease

(4) If a deposit of mineral is found by a licensee that in the opinion of the Minister is of economic importance, the licensee is entitled to apply for a lease comprising not more than 10 per cent of the area for which the licence was issued. Idem

(5) The lease shall be for a term of ten years and shall contain such conditions as the Minister considers proper. Term

(6) The annual rental shall be at the rate of not less than 50 cents and not more than \$5 per acre. Rental

(7) The lease may be renewed for terms of ten years at such rental and subject to such conditions as the Minister considers proper. Renewal

(8) The Lieutenant Governor in Council may make such regulations as the Lieutenant Governor in Council considers expedient for the better carrying out of this section. R.S.O. 1970, c. 274, s. 656 (2-6). Regulations

PART XIV

ACREAGE TAX

Interpre-
tation

201. In this Part, "municipality" means a city, town, village, township or improvement district. R.S.O. 1970, c. 274, s. 657.

Amount
of tax

202.—(1) There shall be paid to the Crown in right of Ontario in each year an acreage tax of 50 cents an acre on any lands or mining rights to which this Part applies.

Minimum
tax

(2) The minimum acreage tax is \$1 a year in a municipality and \$4 a year in territory without municipal organization. R.S.O. 1970, c. 274, s. 658.

Date of
payment
of tax

203. The acreage tax shall be imposed for each calendar year and is payable on or before the 1st day of October in the year for which it is imposed. R.S.O. 1970, c. 274, s. 659.

Lands liable
for tax

204.—(1) Except as provided in this Part,

- (a) all lands and mining rights in territory without municipal organization patented under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes;
- (b) all land in territory without municipal organization being held or used for mining purposes howsoever patented or alienated from the Crown;
- (c) all mining rights in, upon or under lands in a municipality patented under or pursuant to any statute, regulation or law at any time in force authorizing the granting of Crown lands for mining purposes;
- (d) all mining rights in, upon or under land in a municipality and being held or used for mining purposes howsoever patented or alienated from the Crown; and
- (e) all mining rights howsoever patented or acquired which are severed from or held apart or separate from the surface rights,

are liable for, and the owner or lessee thereof shall pay the acreage tax.

(2) No acreage tax is payable in respect of mining lands or mining rights granted by the Crown by lease or renewal of lease. R.S.O. 1970, c. 274, s. 660. Exemption from tax

205.—(1) The Minister may exempt lands or mining rights from the tax under this Part where, Exemptions from tax by Minister

- (a) land has been subdivided by a registered plan into lots or parcels for city, town, village or summer resort purposes and there is no severance of the surface and mining rights;
- (b) land is being actually used for public park, educational, religious or cemetery purposes and there is no severance of the surface and mining rights;
- (c) land is in *bona fide* use for farming or other agricultural purposes and there is no severance of the surface and mining rights; or
- (d) the mining rights in, upon or under any land situated south of the French River, Lake Nipissing and the Mattawa River, including the Territorial District of Manitoulin, are being held, used or developed solely for the production of natural gas or petroleum.

(2) The decision of the Minister as to the right of exemption under subsection (1) is final and conclusive. R.S.O. 1970, c. 274, s. 661. Decision of Minister final

206. Where the Minister is satisfied that the surface rights in respect of a mining claim or mining location are being used for purposes other than that of mining or the mineral industry, this Part applies only to the mining rights. R.S.O. 1970, c. 274, s. 662. Cases where mining rights taxable only

207. The Deputy Minister shall cause to be prepared each year a tax roll of the lands and mining rights and persons liable to the acreage tax. R.S.O. 1970, c. 274, s. 663. Preparation of tax roll

208. The Deputy Minister may register in the proper land registry office a notice of liability to taxation and forfeiture, in the prescribed form, in respect of any lands or mining rights subject to the acreage tax. R.S.O. 1970, c. 274, s. 664. Registration of notice of liability and forfeiture

209. Notwithstanding sections 207 and 208, every person and property liable to the acreage tax is liable whether entered in the tax roll or not, and the tax is, without any Liability for tax though not on roll

notice or demand, payable at the time and in the manner provided in this Part. R.S.O. 1970, c. 274, s. 665.

Com-
missioner
may settle
dispute

210.—(1) Any person claiming an interest in any lands or mining rights entered on the tax roll or whose name has been entered on the tax roll, as being liable to the acreage tax or who disputes the amount of the tax levied on any lands or mining rights in which he has an interest may apply to the Commissioner to determine whether such lands and mining rights are or whether he is liable to the acreage tax and to be entered on the tax roll or the amount of the tax payable, and the Commissioner shall hear and determine such matter.

Minister
to be
party

(2) The Minister is a party to any proceedings before the Commissioner under this section.

Omissions
from tax
roll

(3) The Minister may refer to the Commissioner for hearing and adjudication any question or dispute as to whether any mining rights or lands have or any person has been wrongfully omitted from the tax roll. 1971, c. 50, s. 58 (25).

Procedure
to enforce
claim for
payment
of taxes
by one
co-owner
against
another

211.—(1) Where lands or mining rights liable for acreage tax are held by two or more co-owners and all such tax has been paid by one or more of them and the other or others has or have neglected or refused to pay his or their proportion of the tax for a period of four or more consecutive years, the Commissioner, upon the application of any co-owner or co-owners who has or have paid the tax for the period of four or more consecutive years immediately prior to the date of the application and upon the receipt of such other information and particulars as he requires, may make an order requiring the delinquent co-owner or co-owners to pay, within three months of the date of the order or such further time as the Commissioner may fix, his or their fair proportion of the tax to the co-owner or co-owners who has or have paid all the tax, together with interest at the rate of 6 per cent per annum compounded yearly, and such costs of the application as are allowed by the Commissioner.

Fee

(2) An application under subsection (1) shall be accompanied by a fee of \$25. R.S.O. 1970, c. 274, s. 667 (1, 2).

Service of
order

(3) An order made under this section shall be served in such manner as the Commissioner may direct.

Disputes
as to
liability

(4) If a co-owner, upon whom an order made under subsection (1) has been served, disputes his liability to his co-owner or otherwise to make any payment under the order

or the amount thereof, he may, within the time limited by the order for making the payment, apply to the Commissioner for a hearing and the Commissioner shall hear and determine the dispute and may affirm, amend or rescind the order or make such other order as he considers just, and, if the Commissioner orders that a payment be made, he may fix the time for payment thereof.

(5) Where the time for payment fixed by an order made under subsection (1) has expired and no application for determination of a dispute has been made, or where the time fixed by an order made under subsection (4) has expired, and where such additional time, if any, as has been granted by the Commissioner has expired, if it is proved to the satisfaction of the Commissioner that the payment has not been made, he may make an order vesting the interest of the delinquent co-owner or co-owners in the lands or mining rights to which the payment relates in the co-owner or co-owners who has or have paid the taxes. 1971, c. 50, s. 58 (26). Vesting order

(6) Any order made against an incorporated company under this section shall be directed to the company only. Service of order on company

(7) For the purpose of this section, two or more co-holders or co-lessees shall be deemed to be co-owners, and an incorporated company and a shareholder therein shall be deemed to be co-owners of the lands of the company. R.S.O. 1970, c. 274, s. 667 (4, 5). Interpretation

212.—(1) The Deputy Minister shall cause to be prepared between the 1st day of January and the 31st day of March in each year a list of all lands and mining rights in respect of which any acreage tax is two years or more in arrear, and, not later than the 30th day of June next following, shall cause to be sent by registered mail a notice to the person appearing from search or inquiry at the land registry office to be the owner of the property in default and to every person appearing from that search or inquiry to have an interest therein, at the address or last known address of such person so far as he can reasonably ascertain it, stating that, unless the total amount of tax and penalties due and payable under this Part are paid on or before the 31st day of December next following, the property will be forfeited to and vested in the Crown on the 1st day of January next following, and to the amount so due and payable there shall in every case be added and paid as costs the sum of \$10 for each property. Defaulters list and notice of forfeitures

Publication
of list and
notice

(2) Not later than the 15th day of July in each year, the Deputy Minister shall cause the list prepared under subsection (1) to be published in one issue of *The Ontario Gazette* and in one issue of a newspaper published in the district or county in which the property is situate, giving notice that, unless the total amount of acreage tax, penalties and costs shown therein are paid on or before the 31st day of December next following, the property will be forfeited to and vested in the Crown on the 1st day of January next following.

Declaration
of forfeiture

(3) Where the total amount of acreage tax, penalties and costs remain unpaid after the 31st day of December of the year of publication of the notice mentioned in subsection (2), the Minister by certificate, in the prescribed form, may, on or after the 1st day of January next following, declare the lands or mining rights, and every interest therein, forfeited to and vested in the Crown, and thereupon the lands or mining rights, and every interest therein, vest in the Crown absolutely freed and discharged from every estate, right, title, interest, claim or demand therein or thereto whether existing, arising or accruing before or after such forfeiture is declared.

Not open
for staking

(4) Except as provided in subsection (7), lands and mining rights so forfeited are not open for prospecting, staking out, sale or lease under this Act.

Registration
of certificate

(5) The land registrar of the land titles or registry division in which any land or right mentioned in a certificate of forfeiture made under subsection (3) is situate shall, upon receipt of the certificate, duly register it and it is absolute and conclusive evidence of the forfeiture to the Crown of the land or mining rights so certified to be forfeited and is not open to attack in any court by reason of the omission of any act or thing leading up to the forfeiture.

R.S.O. 1980,
cc. 445, 230
not to apply
to forfeited
lands

(6) Upon registration of the certificate of forfeiture in the land registry office, the *Registry Act* or the *Land Titles Act*, as the case may be, ceases to apply to the land forfeited, and the land registrar shall note that fact in his register in red ink.

Opening
forfeited
lands, etc.,
for
prospecting

(7) The lands and mining rights forfeited to and vested in the Crown under this Part that are mentioned in a notice published in one issue of *The Ontario Gazette* during May of any year are open for prospecting, staking out, sale or lease under this Act at and after 7 o'clock standard time in the forenoon of the 1st day of June next following. R.S.O. 1970, c. 274, s. 668.

213. Any person duly authorized by the Minister in writing may, for the purpose of ascertaining the names and addresses of owners or lessees of land or mining rights liable to taxation under this Part, search and inspect registry books, indexes and documents in land registry offices, and no charge is to be made by and no fee is payable to a land registrar for any such search or inspection. R.S.O. 1970, c. 274, s. 669.

Right to
search
land
registry
office free
of charge

214.—(1) The Lieutenant Governor in Council, upon the recommendation of the Minister, may by order revoke, cancel or annul the forfeiture of any lands or mining rights under this Part, and the Deputy Minister shall cause the order to be registered in the proper land registry office and thereupon the lands or mining rights revert in the owner or lessee of the lands or mining rights at the time of forfeiture, his heirs, successors or assigns, subject to any lien, mortgage or charge entered or registered prior to the forfeiture and still outstanding.

Annulment
of forfeiture

(2) Where application is made for an order under subsection (1), the Minister may direct the lands or mining rights described in the application to be withdrawn from prospecting, staking out, sale or lease until the disposition of the application.

Withdrawal
of lands from
prospecting,
etc.

(3) The Minister may direct an application for an order under subsection (1) to be accompanied by a fee of \$25. R.S.O. 1970, c. 274, s. 670.

Fee

215.—(1) Where the acreage tax is not paid within the time prescribed, a penalty of 6 per cent compounded yearly shall be added thereto forthwith and in each year thereafter that the tax remains unpaid, and for all purposes the increased amounts become and are the tax due and payable under this Part.

Six per cent
to be added
for default

(2) The Deputy Minister, or such other person as is directed by the Minister, shall keep a record of all arrears of acreage taxes with the increased amounts from time to time entered thereon. R.S.O. 1970, c. 274, s. 671.

Record of
arrears to
be kept

216. All taxes, penalties and costs payable under this Part constitute a special lien on the lands or mining rights against which the tax under this Part is levied in priority to every claim, privilege, lien or encumbrance of any person, whether the right or title of that person has accrued before, or accrues after, the attaching of the special lien, and its priority is not lost or impaired by any neglect, omission or error of any official, officer or person, or by want of registration, and the special lien may be realized by action for sale of any or all property subject to it. R.S.O. 1970, c. 274, s. 672.

Special
lien and
priority
of the tax

Right of
action

217. If an owner or lessee of lands or mining rights fails to pay the acreage tax on his lands or mining rights when due, the Minister may bring action in any court of competent jurisdiction for the recovery of the tax together with penalties and costs. R.S.O. 1970, c. 274, s. 673.

Compromise
of acreage
taxes

218.—(1) Where a doubt arises as to the liability of a person to pay a tax or any part of a tax imposed under this Part, the Minister may, subject to the approval of the Lieutenant Governor in Council, compromise the matter by the acceptance of such amount as he considers proper and, where the tax imposed has been paid under protest, he may refund the tax or any part thereof to the person making the payment under protest.

Exemption
from acreage
tax

(2) Where land that was not subject to tax under this Part becomes subject to tax because the surface rights thereof have been severed from the mining rights for a public road, highway or public utility, the Minister may exempt the mining rights so severed from the tax during such term as he is satisfied that the mining rights are not being used or held for mining purposes. R.S.O. 1970, c. 274, s. 674.

Lands and
easements
revert to
Crown

219. Where under this Part or section 104, 198 or 199 a dominant tenement reverts to and becomes vested in the Crown, any easement appurtenant thereto passes to the Crown and, where a servient tenement reverts to and becomes vested in the Crown, any easement to which the servient tenement is subject is not affected. R.S.O. 1970, c. 274, s. 675.

SCHEDULE

Mining Act

SCHEDULE OF FEES

(Section 192)

1. For a prospector's licence or renewal thereof for an individual. (See sections 19, 22)	\$ 5.00
2. The fee for a prospector's licence or renewal thereof for a company shall be based on its authorized capital as follows:	
1. Where the authorized capital does not exceed \$50,000 or 50,000 shares of no par value.....	25.00
2. Where the authorized capital exceeds \$50,000 or 50,000 shares of no par value but does not exceed \$1,000,000 or 1,000,000 shares of no par value.....	50.00
3. Where the authorized capital exceeds \$1,000,000 or 1,000,000 shares of no par value.....	100.00
3. For recording each boring permit staked out by a licensee....	10.00
4. For recording each mining claim staked out by a licensee....	10.00
5. For examining claim record book, per claim.....	.25
6. For inspecting any document filed with a mining recorder....	.25
7. For recording a dispute, per claim. (See section 56)	10.00
8. For certificate of record of claim. (See section 57)	1.00
9. For certificate of performance of working conditions. (See section 76)	1.00
10. On filing appeal from recorder's decision. (See section 135)....	10.00
11. On filing appeal from Mining and Lands Commissioner's decision. (See section 155)	20.00
12. For filing a transfer of the whole of or any interest in a mining claim.....	5.00
13. For filing an agreement, power of attorney or revocation thereof, copy of writ of execution, discharge of execution or any other instrument affecting a recorded claim, right or interest, per claim.....	2.00
14. For a substituted prospector's licence. (See section 23)	1.00
15. For special renewal licence under section 86 to save forfeiture, twice the prescribed licence fee	
16. For recording an order of the Mining and Lands Commissioner extending the time for performing working conditions, affixing metal tags or making application and payment for patent or lease, per claim.....	5.00

17. For recording an order of the Mining and Lands Commissioner relieving against forfeiture or loss of rights and extending the time for performing working conditions, affixing metal tags, making application for patent or lease or authorizing the filing of a belated report of work, per claim.....	\$10.00
18. For recording an order of the Mining and Lands Commissioner, or made on appeal from him, per claim. (See section 75)	1.00
19. For recording a certificate that interest in claim or other recorded right or interest is called in question, per claim. (See section 75)	10.00
20. For copies or certified copies of any document, paper or record obtained from any officer, per folio.....	.10
21. For a copy or certified copy of an application to record a mining claim or of a report of work, each.....	1.00
22. For every affidavit sworn before a recorder.....	.25
23. For abstract or copy of entries in record book respecting a mining claim.....	.50
24. For making additional entries on an abstract of a mining claim	.25
25. For filing an application for a mining claim under subsection 54 (2)	10.00
26. For a quarry permit covering an area of 40 acres or less.....	10.00
and for each additional acre over 40 or part thereof.....	.25
27. For consenting to the transfer of a mining lease or licence of occupation or any interest in a mining lease or licence of occupation.....	5.00
28. For consenting to or for filing any acceptable document relating to a mining lease or licence of occupation other than a transfer.....	2.00

R.S.O. 1970, c. 274, Sched.; 1972, c. 116, s. 25; 1973, c. 105, s. 4.

CHAPTER 269

Mining Tax Act

1. In this Act,

Interpre-
tation

- (a) “associated persons” means associated persons as determined under subsection 3 (4);
- (b) “Deputy Minister” means the Deputy Minister of Natural Resources;
- (c) “mine” means any opening in the ground and any working of the ground from or by which any mineral substance is taken, and comprises the mining claim, mining location and the whole parcel of land in which any such workings are or have been carried on;
- (d) “mineral substance” means every type and kind of ore, rock and mineral, whether organic or inorganic, but does not include diatomaceous earth, limestone, marl, peat, clay, building stone, stone for ornamental or decorative purposes, non-auriferous sand or gravel, natural gas or petroleum, or sodium chloride recovered by the solution method;
- (e) “Minister” means the Minister of Natural Resources;
- (f) “Ministry” means the Ministry of Natural Resources;
- (g) “municipality” means a city, town, village, township or improvement district;
- (h) “operator”, when used in reference to a mine, means the person that has the right to work the mine and win mineral substances from it, whether he does so himself or through his agents or servants, and “operate” and “operation”, when used in reference to a mine, have a corresponding meaning;
- (i) “output” when used in reference to a mine means the mineral substances raised, taken or obtained from any mine in Ontario, if those mineral substances,
 - (i) are sold as such, or

- (ii) are not sold as such but are fed into a treatment plant at any mill, smelter or refinery and the product of their treatment or partial treatment is sold;
- (j) "person" includes corporation, syndicate, trust, partnership, co-owners and, where the context permits, the heirs, executors, administrators or successors of any person;
- (k) "processing" means, with respect to mineral substances, any form of beneficiation, concentrating, smelting, refining or semi-fabricating, or any combination thereof;
- (l) "social asset" means an asset that is incidental and ancillary to mining and processing operations and that relates directly to the provision of housing, recreational and service facilities, provided that the asset,
 - (i) is necessary to attract or retain employees, and
 - (ii) is available for the use of all employees;
- (m) "taxation year" means the period for which the accounts of the operator of a mine are ordinarily made up and accepted for the purposes of assessment under this Act, and any change in a usual and accepted taxation year shall, for the purposes of this Act, be made only with the approval of the Minister, but no taxation year shall be for a period greater than fifty-three consecutive weeks. 1972, c. 140, s. 1; 1974, c. 132, s. 1; 1978, c. 82, s. 1.

When taxes
accrue and
when payable

2.—(1) The taxes imposed under this Act accrue on the last day of the taxation year and the estimated amount thereof is payable to the Minister and must be in the hands of the Ministry not later than two months following the close of the taxation year.

Payment of
balance

(2) Every operator of a mine and every other person liable to pay a tax under this Act shall, at the time he makes the return required under section 7, pay the amount, if any, by which any tax that he estimates to be payable in the return that is required under section 7 exceeds the amount paid under subsection (1). 1972, c. 140, s. 2.

3.—(1) Every mine, the profit of which as determined under ^{Profit tax} this section exceeds \$250,000 in a taxation year, is liable for and the owner, holder, tenant, occupier or operator of the mine shall pay a tax of,

- (a) 15 per cent on the excess of profit above \$250,000 and up to \$1,000,000; and
 - (b) 20 per cent on the excess of profit above \$1,000,000 and up to \$10,000,000; and
 - (c) 25 per cent on the excess of profit above \$10,000,000 and up to \$20,000,000; and
 - (d) 30 per cent on the excess of profit above \$20,000,000.
- 1979, c. 40, s. 1.

(2) For the purpose of this section and section 7, all ^{Mines operated together} mines that are operated by, and the profits of which accrue to, the same person or associated persons shall, for the purpose of determining the amount of tax payable under this Act, be deemed to be and be dealt with as one and the same mine and not as separate mines.

(3) Subsection (2) does not apply to a mine brought into active ^{Exception} operation for the first time after the 9th day of April, 1974.

(4) Where two or more mines are worked, operated, ^{Associated persons} managed, or controlled by two or more persons and the Minister is satisfied, notwithstanding the separate existence of such persons,

- (a) that their separate existence in a taxation year is not solely for the purpose of carrying out the business of the different persons in the most effective manner; and
- (b) that one of the reasons for their separate existence is to reduce the amount of taxes that would be otherwise payable under this section,

the two or more different persons shall, if the Minister so directs, be deemed to be associated persons for the purpose of subsection (2) and section 7.

Notice

(5) Written notice of a direction by the Minister under subsection (4) shall be mailed or delivered forthwith to the persons deemed to be associated persons.

Appeal

(6) Where two or more different persons are deemed to be associated persons by direction of the Minister under subsection (4), any such person or persons may, within thirty days after the day on which notice of the making of the direction is mailed or delivered, appeal the direction to the Divisional Court in accordance with the rules of court and any appeal to the Court of Appeal from a decision of the Divisional Court shall be upon notice delivered or served by the party appealing within fifteen days after the making of the decision that is appealed, and leave to appeal is not necessary. 1974, c. 132, s. 2 (2).

Ascertainment of profit

(7) The profit for a taxation year is the difference between,

- (a) where the mineral substances raised, taken or gained from the mine are sold as such, the amount of the gross receipts from the output during the taxation year;
- (b) where the mineral substances or a part thereof are not sold as such, the amount of the actual market value at the pit's mouth of the mineral substances raised, taken or gained from the mine that are fed into a treatment plant at any mill, smelter or refinery and the product thereof is sold in the taxation year; or
- (c) if there is no means of ascertaining the actual market value at the pit's mouth of the mineral substances referred to in clause (b), the amount at which the mine assessor appraises the value of such mineral substances, provided that the mine assessor in appraising such value shall deduct,
 - (i) the processing costs incurred as prescribed or determined by the regulations, and
 - (ii) an allowance for profit in respect of processing at a rate or rates prescribed by the regulations or determined by the mine assessor,

from the proceeds of the processed mineral substances sold during the taxation year,

and the following expenses, payments, allowances and deductions,

- (d) the expenses incurred in respect of scientific research conducted in Canada and related to mining operations in Ontario;
- (e) the proper working expenses of the mine, both underground and above ground, including salaries and wages of all necessary employees employed at or about the mine and the proper salaries and office expenses for necessary office work done at the mine and at the head office of the mine and in immediate connection with the mining operations;
- (f) the proportion of the operating and maintenance expenses related to social assets in Ontario that is directly attributable to the mining operations after deducting therefrom all rents, fees, grants and other payments received during the taxation year by the mine operator in connection therewith, to the extent that such expenses are not otherwise deductible under the regulations;
- (g) the cost of power, light and transportation used in the mining operations and in handling the mineral substance taken from the mine;
- (h) the net cost of food and provisions if supplied by the operator to the employees of the mine;
- (i) the cost of explosives, fuel and any other supplies necessarily consumed in the mining operations;
- (j) any proper outlay incurred in safeguarding or protecting the mine, mineral substance or output;
- (k) the cost of proper insurance upon the output and upon the mining plant, machinery, equipment and buildings used for or in immediate connection with the mining operations or for storing the mineral substance, if paid or borne by the operator;
- (l) subject to subsections (8), (9) and (10),
 - (i) an allowance for depreciation in each taxation year of not more than 15 per cent of the

capital cost to the operator computed at the close of the taxation year of the mining plant, machinery, equipment and buildings,

(ii) notwithstanding subclause (i), an allowance for depreciation in each taxation year not exceeding 30 per cent of the capital cost to the operator computed at the close of the taxation year of the mining plant, machinery, equipment and buildings acquired after the 9th day of April, 1974, that has not been used previously in mining operations, and

(iii) notwithstanding subclause (i) or (ii), an allowance for depreciation in each taxation year on mining plant, machinery, equipment and buildings acquired at arm's length for use in a new mine or a major expansion of an existing mine after the 7th day of March, 1978 and before the completion of the project in an amount not exceeding the lesser of,

A. the profits for the taxation year from such new mine or major expansion of an existing mine, and

B. the undepreciated capital cost to the mine operator of the mining plant, machinery, equipment and buildings at the end of the taxation year before making any deduction under this subclause for the taxation year,

until the full cost thereof has been allowed as an expense under this clause;

(m) donations actually made for charitable, educational or benevolent purposes that are approved by the mine assessor; and

(n) notwithstanding anything in this subsection, up to 100 per cent of,

(i) the exploration and development expenditures incurred in Ontario after the 9th day of April, 1974 and prior to the date of commencement of production, with the object of finding, testing or opening up deposits of mineral substances, and

- (ii) the exploration and development expenditures, incurred in Ontario on and after the date of commencement of production with the object of finding, testing or opening up deposits of mineral substances,

if the following conditions are met:

1. The expenditure has not at any time in a previous taxation year been allowed as an expense or deduction under this Act.
2. The expenditure is approved by the mine assessor.
3. The expenditure does not include money paid for the purchase or acquisition of an option to purchase or in the acquisition of the right to mine or an option on the right to mine such deposits.
4. The expenditure was made or borne by the operator of the mine liable to taxation.
5. Separate accounts of the expenditure are kept and furnished to the mine assessor in reasonable detail with the return required under section 7. 1972, c. 140, s. 3 (3); 1974, c. 132, s. 2 (3-5, 7); 1978, c. 82, s. 2 (1-4).

(8) Notwithstanding clause (7) (l), no allowance for depreciation on any asset that is a social asset shall be deducted under subsection (7). 1978, c. 82, s. 2 (5). Depreciation on social assets not allowed

(9) No allowance for depreciation shall be made under subsection (7) (l) (iii) unless, Qualification of new mine or major expansion

- (a) the new mine or major expansion of an existing mine has been designated by the Minister for the purposes of this subsection; and
- (b) the operator or other person liable to pay the tax under this Act has elected that the project be treated as a new mine or a major expansion of an existing mine under subclause (7) (l) (iii).

(10) An election under clause (9) (b) shall be made in the return delivered under section 7 in which the first claim for depreciation When election to be made

is made for the new mine or the major expansion of an existing mine under subclause (7) (l) (iii) and shall be binding upon the person by whom it is made and shall not subsequently be altered or revoked. 1978, c. 82, s. 2 (6).

Allowances
and
deductions
not
permitted

(11) No allowance or deduction shall be made in respect of,

- (a) the cost of mining plant, machinery, equipment and buildings except as provided in subsection (7) and in section 4;
- (b) capital invested, or interest or dividend upon capital or stock or investment;
- (c) depreciation in the value of the mine, mining land or mining property by reason of exhaustion or partial exhaustion of the ore or mineral;
- (d) royalties paid for or in respect of the output of a mine situated on lands not the property of the Crown. 1972, c. 140, s. 3 (4); 1974, c. 132, s. 2 (8); 1978, c. 82, s. 2 (7).

Part-year
production

(12) In determining the amount of the tax under this section where the period of production is, in the opinion of the mine assessor, for a period of less than twelve months, the amount of the profit for the period of production shall be multiplied by the quotient of 365 divided by the number of days of production, and the rate mentioned in subsection (1) shall be applied to the product thereof in the same manner as though such product was the true profit for the taxation year, and the amount so determined shall be multiplied by the quotient of the number of days of production divided by 365. 1972, c. 140, s. 3 (5).

Recapture

(13) The undepreciated capital cost of the mining plant, machinery, equipment and buildings, herein referred to as "the assets", at any time means the amount by which the aggregate of,

- (a) the capital cost to the operator of the assets acquired before that time; and
- (b) all amounts included in profits by virtue of subsection (14) for a taxation year ending prior to that time,

exceeds the aggregate of,

- (c) the total depreciation deducted for the assets by the operator before that time; and
- (d) for each disposition of any asset or part thereof, the lesser of,
 - (i) the proceeds of disposition of that asset or part, and
 - (ii) the capital cost to the operator of that asset or part.

(14) Where, at the end of a taxation year, the aggregate ^{Idem} of all amounts determined under clauses (13) (c) and (d) exceeds the aggregate of all amounts determined under clauses (13) (a) and (b), the excess shall be included in computing the profits for the taxation year.

(15) Where mining plant, machinery, equipment or buildings or any part thereof were not acquired or disposed of at arm's length and the Minister considers it necessary or advisable, he may determine in accordance with the regulations the capital cost to the operator and the proceeds of disposition of the mining plant, machinery, equipment and buildings for the purposes of this section. ^{Minister may make determination}

(16) For the purposes of this section, the rules determining "at arm's length" in section 251 of the *Income Tax Act* (Canada) apply with necessary modifications. 1978, c. 82, s. 2 (8). ^{Meaning of "at arm's length" R.S.C. 1952, c. 148}

4.—(1) In this section,

^{Interpretation}

- (a) "agent" means an agent of Ontario Hydro for the purpose of receiving on behalf of Ontario Hydro any uranium pursuant to a subsequent contract;
- (b) "Ontario Hydro" includes its successors and assigns;
- (c) "original contract" means any contract entered into with Ontario Hydro and approved by the Lieutenant Governor in Council subsequent to the 31st day of December, 1977 and prior to the 8th day of March, 1978 to supply uranium to Ontario Hydro;
- (d) "specified uranium undertaking" means any undertaking in Ontario carried out pursuant to an original or subsequent contract to supply uranium to Ontario Hydro and includes any other undertaking that may be prescribed by the regulations;

(e) "subsequent contract" means any contract to supply uranium to Ontario Hydro or any of its agents entered into on or after the 8th day of March, 1978,

(i) made with a party, other than Ontario Hydro, that was a party to the original contract, or

(ii) granting, transferring or assigning any rights under the original contract to supply uranium to Ontario Hydro;

(f) "undertaking" means any mining or processing operation that produces uranium.

No deduction
for certain
operating
expenses

(2) Notwithstanding clause 3 (7) (f), no deduction shall be made under that clause for the proportion of expenses that is attributable to a specified uranium undertaking.

Allowance
for
depreciation

(3) Notwithstanding subclause 3 (7) (l) (i), an allowance under that clause for depreciation in each taxation year shall be not less than 5 per cent and not more than 15 per cent of the capital cost to the operator computed at the close of a taxation year of the mining plant, machinery, equipment and buildings that is attributable to the operation of a specified uranium undertaking.

No allowance
for
proportion of
depreciation
attributable
to specified
uranium
undertaking

(4) Notwithstanding subclause 3 (7) (l) (iii), no allowance under that clause for depreciation shall be allowed for the proportion of depreciation on any mining plant, machinery, equipment or buildings that is attributable to the operation of a specified uranium undertaking.

Deduction for
exploration
and
development
expenditures

(5) Notwithstanding clause 3 (7) (n), at least 15 per cent and not more than 100 per cent of the exploration and development expenditures permitted under subclauses (i) and (ii) of that clause shall be deducted for the proportion of exploration and development expenses that is attributable to the operation of a specified uranium undertaking. 1978, c. 82, s. 3.

Duty to
give notice
of active
operations

5.—(1) The operator of every mine from which any mineral substance is raised, taken or gained shall, within ten days after the commencement of the active operation of the mine, give written notice to the mine assessor of the fact that the mine is in active operation, and such notice shall state the name and address of the operator of the mine and of the owner, holder, tenant and occupier of the mine if other than

the operator and shall forthwith give written notice to the mine assessor of every change in the name or address of any of such persons and such notice shall further clearly set forth an address for service for each of them where any notice or demand that may be given under this Act may be given or served.

(2) Any notice or demand required or provided for by this Act shall be deemed to have been properly and sufficiently given or served to the owner, holder, tenant, occupier or operator if mailed by registered mail to the address for service for such person given by the operator, and in case no address for service is given as herein required, then any notice or demand required or provided for by this Act is sufficiently given or served if the same is mailed by registered mail to any address that the official or person sending the notice or demand considers most likely to bring the notice or demand to the attention of the person to whom it is directed. Service of
notice

(3) The operator of every mine shall forthwith give written notice to the mine assessor of every discontinuance of the active operation of the mine and of every recommencement thereof after discontinuance. 1972, c. 140, s. 4. Notice of
change of
interest or
dis-
continuance

6.—(1) No person shall ship, send, remove or carry away or permit to be shipped, sent, removed or carried away from the mine from which the same has been taken any mineral substance or any product thereof until notice has been given to the mine assessor as required by section 5 that the mine from which the mineral substance or product is taken is in active operation. Shipping
forbidden
before
notice

(2) Every person who contravenes subsection (1) is guilty of an offence and, on conviction, is liable to a fine of not more than \$5,000. 1972, c. 140, s. 5. Offence

7.—(1) On or before the last day of the month that ends six months following the close of the taxation year, every operator of every mine in Ontario shall, without notice or demand, deliver to the mine assessor a return containing an estimate of the tax for which the mine of which he is the operator is liable, and the return shall contain full particulars of every calculation and fact upon which the estimate is based, and the return shall be verified by a certificate stating that the information included in the return is in agreement with the books required to be kept under this Act, and such certificate shall be signed by a person who has personal knowledge of the affairs of the mine, but the mine assessor may require the person who certifies the return to verify Return

under oath the return or any part thereof, and any person so required shall forthwith make and file with the mine assessor an affidavit verifying the truth of the matters and facts contained in the return.

Idem

(2) The mine assessor, or any officer of the Ministry who is authorized by the Minister so to do, may in writing demand from any person liable to pay the tax imposed by section 3 or from any person believed to have knowledge relevant to the proper assessment of tax under this Act that such person make a return to the mine assessor containing the information required by subsection (1), or that such person furnish to the mine assessor any information necessary to enable the mine assessor to make a full and complete assessment under this Act or a proper estimate of any tax that may be due under this Act and every such person upon receipt of the demand shall make and deliver the return to the mine assessor or officer of the Ministry, as the case may be. 1972, c. 140, s. 6.

Notice of
assessment

8.—(1) The mine assessor shall examine the returns delivered under section 7 together with any other information furnished under this Act, and shall send to every person liable to pay the tax imposed by section 3 a notice of assessment confirming or altering the amount of tax that has been estimated to be payable and any amount of tax that is assessed to be payable over the estimated amount shown in the return shall be paid within one month after the mailing of the notice of assessment, whether or not an appeal of the assessment is taken under this Act. 1972, c. 140, s. 7 (1).

Assessment
where no
return

(2) Where an operator fails to make a return under section 7 or a remittance as required under this Act or the regulations or if his returns are not substantiated by his records and any information furnished under this Act, the mine assessor may assess the tax, interest or penalties payable by the operator.

Notice of
assessment

(3) Where the mine assessor has made an assessment under subsection (2), he may send to the operator or person liable to pay the tax a notice of assessment requiring that the amount of the assessment made under subsection (2) be paid to the Minister within one month after the mailing of the notice of assessment, whether or not the assessment is appealed under this Act. 1978, c. 82, s. 4, *part*.

Refunds

(4) Where the amount of the tax that is assessed is less than the amount paid to the Minister on account of tax for the taxation year with respect to which the assessment is made, the amount that has been paid to the Minister in

excess of the tax assessed shall be remitted forthwith to the person who paid such excess amount.

(5) Where an assessment made under this Act is not appealed within the time provided by this Act, the amount of tax shown in the assessment is the amount of tax for which the mine assessed is liable and which the owner, holder, tenant, occupier or operator of that mine is required to pay, and the Minister may forthwith take all remedies available to him under this Act or at law to recover all taxes, penalties and interest provided for by this Act, and all taxes the assessment of which has not been appealed within the time provided for by this Act and all penalties and interest provided for by this Act are a debt due to Her Majesty in right of Ontario for which every person by whom such taxes, interest and penalties are payable is accountable. 1972, c. 140, s. 7 (2, 3). Recovery of taxes

(6) An assessment, subject to being varied or vacated on an appeal and subject to a reassessment, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto. 1978, c. 82, s. 4, *part*. Assessment deemed valid

9. The mine assessor may at any time assess tax, interest or penalties, or notify in writing any person by whom a return for a taxation year has been filed that no tax is payable for the taxation year, and may, Reassessment

(a) at any time, if the operator or person filing the return,

(i) has made any misrepresentation or committed any fraud in filing the return or supplying any information under this Act, or

(ii) has failed to file the financial information with the return required to be filed under section 7, or

(iii) has been negligent in supplying any information under this Act, or

(iv) has filed with the Minister a waiver in a prescribed form within four years from the date of mailing of a notice of an original assessment or of a notification that no tax is payable for a taxation year; and

(b) within four years from the date referred to in sub-clause (a) (iv), in any other case,

reassess or make additional assessments or assess a tax, interest or penalties, as the circumstances require. 1978, c. 82, s. 5.

Appeal

10.—(1) Where any person who is assessed to pay any taxes levied on a mine under this Act is not satisfied with the notice of assessment of such tax that is sent to him under section 8, he may appeal the assessment within thirty days after the day on which the notice of assessment is mailed but shall, before commencing the appeal, pay to the Minister the amount of taxes and interest, if any, required to be paid by the notice of assessment, and may then commence the appeal by delivering to the Minister either personally or by registered mail a written notice of his appeal setting out the reasons for his objection to the assessment and the allegations of fact and law on which he relies to support his objection to the assessment. 1972, c. 140, s. 8 (1).

Referral for hearing

(2) Subject to subsection (4), where notice of appeal of an assessment is delivered as provided for in this section, the Minister shall, in writing, refer the appeal to the Mining and Lands Commissioner or to the Ontario Municipal Board to be tried and determined and shall forthwith inform the appellant and furnish to him a copy of the writing by which the appeal has been referred. 1972, c. 140, s. 8 (2); 1973, c. 105, s. 4.

Hearing of appeal

(3) When the Minister has referred an appeal under this Act, the Mining and Lands Commissioner or the Ontario Municipal Board, as the case may be, shall proceed to try and dispose of the appeal, and for all purposes of hearing, inquiring into and disposing of the appeal has the same power to enforce the attendance of witnesses and to compel them to give evidence and to produce documents and things as is vested in any court in civil cases, and the disposition of the appeal that is made by the Mining and Lands Commissioner or the Ontario Municipal Board, as the case may be, is, for the purposes of this Act, final and conclusive subject to the right of appeal therefrom to the Divisional Court as hereinafter provided. 1972, c. 140, s. 8 (3); 1973, c. 105, s. 4.

Hearing by judge where all facts agreed upon

(4) Where an appellant under this section and the Minister agree in writing upon a statement of all the facts that are relevant and in issue on an appeal under this section, the appellant may, whether or not the matter has been previously referred by the Minister to the Mining and Lands Commissioner or the Ontario Municipal Board, set the appeal down for hearing and determination by the Divisional Court in accordance with the practice and procedure of that court in mat-

ters or causes where all the facts in issue have been agreed upon. 1972, c. 140, s. 8 (4); 1973, c. 105, s. 4.

(5) An appeal lies to the Divisional Court in accordance with the rules of court from any decision of the Mining and Lands Commissioner or the Ontario Municipal Board under subsection (3) and any appeal to the Court of Appeal from a decision of the Divisional Court under this section shall be upon notice delivered or served by the party appealing within fifteen days after the making of the decision that is appealed, and leave to appeal is not necessary. 1972, c. 140, s. 8 (5); 1973, c. 105, s. 4, *revised*. Appeal to
Court of
Appeal

(6) In any appeal that is heard under subsection (3), the Mining and Lands Commissioner or the Ontario Municipal Board hearing the appeal may make such order as to the payment of the costs of the proceedings as seems just, and may direct that such costs be taxed by a taxing officer of the Supreme Court and any costs so taxed shall be paid forthwith after the taxation thereof. 1972, c. 140, s. 8 (6); 1973, c. 105, s. 4. Costs

(7) Where the amount of tax that is finally determined to be payable pursuant to an appeal under this Act is less than the amount of tax that has been assessed and paid, the difference shall be refunded to the appellant, and where the amount of tax that is finally determined to be payable pursuant to an appeal under this Act is more than the amount of tax that has been assessed and paid, the appellant shall pay the difference forthwith to the Minister. Adjustment
of tax
after
appeals

(8) In any appeal under this section or in any action under this Act, any person and any officer or servant of any corporation, whether or not the person or corporation is a party to the appeal or to the action, may be examined upon oath and shall make production upon oath of any documents, records or things that may be in the possession or under the control of the person or corporation in the same manner as a party to an action in the Supreme Court may be required to attend for examination and to make production, but this subsection does not apply to the Minister or to any officer or servant of the Crown other than the mine assessor, an assistant mine assessor or a special mine assessor. 1972, c. 140, s. 8 (7, 8). Examinations
and
production of
documents

11.—(1) Every person liable to pay the tax imposed by section 3 shall keep at or near the mine proper books of account showing the quantity, weight, value, composition and other Books to
be kept

particulars of the mineral substances raised, taken or gained from the mine, and such books shall also show the returns from the mill, smelter or refinery and all receipts derived from the sale of the output or the product of the output of the mine and no mineral substance raised, taken or gained from any mine shall be removed from the mining premises or treated at any mill, smelter or refinery until the weight of the mineral substance has been correctly ascertained and entered in the books of account, and such person shall also keep proper books of account showing each of the several expenses, payments, allowances and deductions mentioned in section 3, and showing any other facts and circumstances necessary or proper for ascertaining the amount of tax imposed by this Act.

Power of
mine assessor
as to books

(2) The mine assessor may determine the number and character of books required to be kept under subsection (1) and may require that the books of account mentioned in subsection (1) be kept at such place in Ontario as the mine assessor determines. 1972, c. 140, s. 9.

Appointment
of mine
assessor

12.—(1) The Lieutenant Governor in Council may appoint an officer to be known as the mine assessor.

Appointment
of assistant
mine
assessors

(2) The Minister may appoint one or more officers of the Ministry to be assistant mine assessors.

Appointment
of special
mine
assessors

(3) The Minister may from time to time appoint any officer of the Ministry or any other person to be a special mine assessor and to perform for a specified time or in a specified locality or in any special matter or case the duties of the mine assessor set out in this Act, and every special mine assessor, while he acts in that capacity, shall be deemed to be an officer of the Ministry, and it is his duty, under the direction of the Minister, to perform the specific duties assigned to him by the Minister and to report to the Minister at the times and in the manner directed by the Minister. 1972, c. 140, s. 10.

Assessors
may enter
mines

13.—(1) It is lawful at all times for a mine assessor, assistant mine assessor or special mine assessor to enter upon any mining premises in Ontario for the purpose of making inquiries, obtaining information and otherwise performing his duties under this Act, and for any of these purposes a mine assessor, assistant mine assessor or special mine assessor may descend all pits and shafts, and may use all tackle, machinery, appliances and things belonging to the mine as he considers necessary or expedient, and shall be given free ingress and egress to, from and over all buildings, erections, structures and vessels used in connection with the mine and any mill, smelter or refinery at which the mineral substance taken from the mine is treated

or in any way modified and shall be allowed to take from time to time from any mining premises such samples or specimens of mineral substance as he desires for the purpose of determining by assay or otherwise the value of any mineral substance being taken from the mine or the value of any product of the output of the mine that results from the treatment or modification of any mineral substance taken from the mine and shall be given full and complete access to all books of account, letters and other documents kept or used for or in connection with the work and business of the mine or with the sale of the output or the product of the output from the mine, and may examine the same and take copies thereof or extracts therefrom, but any information of a private or confidential nature acquired by a mine assessor, assistant mine assessor or special mine assessor under this section shall not be communicated or disclosed to anyone except in so far as it is necessary to do so for the purposes of this Act.

(2) In this section, "mineral substance" includes diatomaceous earth, limestone, marl, peat, clay, building stone, stone for ornamental or decorative purposes, non-auriferous sand or gravel, natural gas or petroleum or sodium chloride recovered by the solution method. 1972, c. 140, s. 11. Interpretation

14.—(1) No person employed in the service of Her Majesty shall communicate or allow to be communicated to any person not legally entitled thereto any information obtained under this Act or allow any such person to inspect or have access to any written statement furnished under this Act. Confidentiality

(2) Every person who contravenes any provision of this section is guilty of an offence and on conviction is liable to a fine of not more than \$200. Penalty

(3) Notwithstanding subsection (1), the Minister may, for the purpose of aiding in an investigation for taxation purposes under this or any other Act, enter into an agreement with the Government of Canada or of any province under which officers of such government will be allowed access to information obtained or any written statement furnished under this Act and officers of the Government of Ontario will be allowed access to information obtained or any written statement furnished under any Act of such government. 1978, c. 82, s. 6. Agreements to exchange information

15. Where a person that is liable for payment of tax under section 3 is also, during any taxation year in which such tax is payable, liable to a municipality for a tax under Allowance for tax paid to municipality

R.S.O. 1980,
c. 31

section 19 of the *Assessment Act* the tax that, in the taxation year, is payable and paid under section 19 of the *Assessment Act* may be deducted from the tax payable for the taxation year under this Act. 1972, c. 140, s. 12.

Compromise
of tax

16. Where any doubt arises as to the liability of any person to pay the whole or any part of the taxes and penalties imposed under this Act, or where owing to exceptional circumstances, it is considered inequitable to demand payment of the whole amount of any taxes and penalties imposed under this Act, the Lieutenant Governor in Council may compromise and settle the matter by accepting such amount as he considers proper and in case the taxes or the penalties or both have been paid he may refund them or part of them to the person making the payment. 1972, c. 140, s. 13.

Remission
of tax on
iron ore
profits

17. The Lieutenant Governor in Council may remit the tax imposed by section 3 upon the profits arising out of the mining of iron ore where he is satisfied that the iron ore has been smelted in Canada or delivered to a blast furnace in Canada for the purpose of being smelted in Canada. 1972, c. 140, s. 14.

Interest on
unpaid tax

18.—(1) Where the amount of tax paid under subsection 2 (1) is less than the amount payable as shown in the notice of assessment issued under subsection 8 (1) or (3), the person liable to pay the tax shall pay interest, at such rate per annum as is prescribed by the regulations, on any outstanding balance of tax, from the date set out under subsection 2 (1) to the date such balance is paid, provided such interest charge shall be suspended for the period from the date that all information, as required by the mine assessor so that he may complete the assessment, has been submitted to him in writing, to the date one month following the mailing of the notice of assessment. 1972, c. 140, s. 15 (1); 1979, c. 40, s. 2 (1).

Penalty

(2) If any such balance is not in the hands of the Ministry within one month of the mailing of the notice of assessment, a penalty as provided for under subsection (4) or (5) shall be added to the amount of tax outstanding, and the person liable to pay the tax shall pay such interest on that amount from the date one month following the mailing of the notice of assessment to the date final payment is in the hands of the Ministry. 1972, c. 140, s. 15 (2); 1979, c. 40, s. 2 (2).

Interest on
overpayment
of tax

(3) Where the amount of tax paid under sections 2, 7, 8 and 10 is more than the amount shown on the notice of assessment issued under subsection 8 (1) or (3) or more than the amount finally

determined where an appeal is taken under section 10, interest at such rate per annum as is prescribed by the regulations shall be paid to the person liable for such tax from the date that all information as required by the mine assessor so that he may complete the assessment has been submitted to him in writing, or from the date payment of any additional tax as required by the notice of assessment referred to herein is made, to the date the amount of the tax has been assessed under section 8 or has been determined under section 10, as the case may be. 1972, c. 140, s. 15 (3); 1979, c. 40, s. 2 (3).

(4) Where any tax imposed under this Act is not paid at the time provided, 10 per cent shall be added thereto forthwith and 10 per cent shall be added on the same day of each year thereafter so long as the tax remains unpaid, and such additional amounts shall for all purposes be deemed to be a tax payable under this Act. 1972, c. 140, s. 15 (4). ^{10 per cent to be added for default}

(5) Every person who wilfully fails to comply with this Act at the time or times provided, ^{Penalty}

(a) by failing to make a payment of tax under section 2;

(b) by making a payment of tax under section 2 that is an unreasonable estimate of the tax payable by him or is a deliberately underestimated amount of the tax payable by him; or

(c) by failing to file a return as required by section 7,

is liable to a penalty of 10 per cent of the amount by which the amount of tax payable as shown in the notice of assessment sent under section 8 exceeds the amount of tax, if any, paid under section 2, and such additional amount shall for all purposes be deemed to be a tax payable under this Act. 1978, c. 82, s. 7.

(6) Any payment, other than a payment of penalties, made to the Minister under this Act shall first be applied in payment of any interest that may be payable on the tax imposed by this Act. 1972, c. 140, s. 15 (5). ^{Payment of interest}

19. Every person who fails to deliver a return that he is required to deliver under section 7 is liable for and shall pay to the Minister a penalty of \$50 for each day during which he fails to deliver the return and any such penalty may be demanded in any notice of assessment provided for in this Act and may be recovered in any manner provided in this Act ^{Penalty for failure to comply with s. 7}

for the recovery or collection of tax but interest shall not be charged, recovered or collected on any such penalty. 1972, c. 140, s. 16.

Offence,
false
information

20. Every person who knowingly makes or signs any false statement or furnishes any false or incorrect information to the mine assessor, an assistant mine assessor, a special mine assessor or to any officer of the Ministry authorized by the Minister under section 7, with respect to any matter or thing as to which information is required under this Act or who keeps or causes or permits to be kept any false or incorrect book or accounts regarding anything required under this Act is, in addition to any other liability under this Act, guilty of an offence and on conviction is liable to a fine of not more than \$5,000. 1972, c. 140, s. 17.

Special
lien and
priority
of the tax

21. All taxes, penalties and interest payable under this Act are a special lien on the mine and upon the leases of and rights respecting the mine and upon all machinery upon or connected with the mine in priority to every claim, privilege, lien or encumbrance of any person, whether the right or title of such person has accrued before or accrues after the attaching of such lien, and this priority shall not be lost or impaired by any neglect, omission or error of any official, officer or person, or by want of registration, and such lien may be realized by action for sale of any or all property, leases and rights that are subject to such lien. 1972, c. 140, s. 18.

Injunction
or
receiver

22. In addition to any other remedy for the recovery of any tax imposed under this Act, an injunction or an order in the nature of an injunction or the appointment of a receiver with all necessary powers, or such other relief or remedy as seems necessary or expedient for securing payment of the tax may, in any case where any tax under this Act is overdue or where the payment of any accrued or future tax seems in danger, be obtained by application to a judge of the Supreme Court or county or district court at the instance and in the name of the Minister to prevent the removal, transportation or transmission of any ore, mineral substance or mineral-bearing substance, or to prevent or restrict mining operations, or to provide for such operations upon such terms and conditions as the judge considers proper. 1972, c. 140, s. 19.

Production
of records

23. Where, contrary to this Act, any person refuses or neglects to permit the mine assessor, assistant mine assessor or special mine assessor to examine, inspect or make copies of any books, records or documents in the custody of or under the control of such person, or where any person obstructs the

mine assessor, assistant mine assessor or special mine assessor in the performance of any duty imposed or authorized by this Act, the Minister or Deputy Minister may apply *ex parte* to a judge of the Supreme Court or county or district court, and the judge may order the production and delivery of such books, records or documents for inspection and copying or enjoin such person from such obstruction. 1972, c. 140, s. 20.

24. Where default is made in the payment of any taxes, ^{Distress} interest or penalties imposed under this Act, the taxes, interest and penalties may be levied and collected by distress, together with all costs of distress, upon the goods and chattels wherever found of the person or any person liable therefor under a warrant signed by the Minister or Deputy Minister directed to the sheriff of any county or district in which the person in arrear may have any goods or chattels, and in such case the sheriff shall realize the amount directed to be realized by the warrant together with all incidental costs by sale of the goods and chattels distrained or of so much thereof as may be necessary to satisfy the amount directed to be levied by the warrant together with the costs of the distress and sale. 1972, c. 140, s. 21.

25.—(1) If any tax, interest or penalty imposed by this Act is not paid when due, the same may be recovered with costs from any person liable for payment of the tax, interest or penalty by an action to be tried without a jury at the suit of the Minister in any court of competent jurisdiction. ^{Action to recover tax}

(2) Any action that may be brought under this Act may be brought by the Minister as plaintiff, and it is not necessary to name the Minister, and the action does not abate by reason of a change in the person of the Minister or by reason of the office being vacant at any time, but the action may proceed as if no change had been made or no vacancy existed. ^{Action by Minister does not abate}

(3) The remedies and the rights of action provided in subsections (1) and (2) are in addition to all other rights and remedies that may be exercised under this Act. 1972, c. 140, s. 22. ^{Remedies in subss. (1), (2) additional to all other remedies}

26.—(1) The Lieutenant Governor in Council may make ^{Regulations} regulations,

(a) prescribing the rates of interest payable under subsections 18 (1) and (3);

(b) prescribing forms and providing for their use;

- (c) determining the amounts to be included or allowed as deductions by the mine assessor in appraising the value of mineral substances at the pit's mouth for the purposes of clause 3 (7) (c);
- (d) prescribing the manner of determining and the matters to be taken into account in determining whether or not,
 - (i) there is to be disaggregation of a mine under subsection 3 (3), and
 - (ii) there is a mine project that is a new mine or a major expansion of an existing mine for the purposes of subclause 3 (7) (l) (iii);
- (e) prescribing or determining anything that, by this Act, is required or permitted to be prescribed or determined by the regulations;
- (f) providing for the manner of determining the time at which a mine project is complete or a mine is brought into active operation;
- (g) authorizing and providing for the recapture of depreciation where such recapture is not otherwise authorized and provided for in this Act;
- (h) providing for the manner of determining the capital cost and proceeds of disposition for the purposes of subsection 3 (15) and the regulations;
- (i) prescribing the methods to be used in calculating the proportion of allowances and deductions available or attributable to a specified uranium undertaking;
- (j) prescribing an undertaking as a specified uranium undertaking;
- (k) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1972, c. 140, s. 23; 1974, c. 132, s. 3 (1); 1978, c. 82, s. 8.

Regulation
re value of
output at
pit's mouth

(2) A regulation under clause (1) (c) may provide that no amounts may be deducted for processing costs or that no allowance or different rates of allowance for profit in respect of processing may be deducted in calculating the value of output at the pit's mouth in different areas prescribed in the regulation.

(3) A regulation made under subsection (1) may be made effective retroactively to a date not earlier than the 1st day of January, 1974. 1974, c. 132, s. 3 (2).

Regulation
may be
retroactive

CHAPTER 270

Ministry of Agriculture and Food Act

1. In this Act,

Interpre-
tation

(a) “Minister” means the Minister of Agriculture and Food;

(b) “Ministry” means the Ministry of Agriculture and Food. R.S.O. 1970, c. 109, s. 1; 1972, c. 1, s. 1, *amended*.

2.—(1) The ministry of the public service known as the Ministry of Agriculture and Food is continued. 1972, c. 1, s. 5 (2); 1972, c. 1, ss. 1, 2, *amended*. Ministry
continued

(2) The Minister shall preside over and have charge of the Ministry. R.S.O. 1970, c. 109, s. 2 (2); 1972, c. 1, s. 1. Minister
to have
charge

3. Subject to the *Public Service Act* there may be appointed a Deputy Minister of Agriculture and Food and such other officers, clerks and servants as the Minister considers necessary for the proper conduct of the business of the Ministry. R.S.O. 1970, c. 109, s. 3; 1972, c. 1, s. 1. Deputy
Minister
and staff
R.S.O. 1980,
c. 418

4. Subject to the *Executive Council Act*, the Minister has the direction and control of, Powers of
Minister
R.S.O. 1980,
c. 147

(a) the administration of the law relating to agriculture and food in all their branches; and

(b) the administration of appropriations under the Ministry,

and has such other powers and shall perform such other functions and duties as are assigned to him by the Lieutenant Governor in Council. R.S.O. 1970, c. 109, s. 4; 1972, c. 1, s. 1.

5.—(1) Upon the recommendation of the Minister, the Lieutenant Governor in Council may establish programs for the encouragement of any branch of agriculture or food. R.S.O. 1970, c. 109, s. 5 (1). Establish-
ment of
programs

**Conditions
to services
or grants**

(2) A program may determine the conditions under which services are provided by the Ministry and expenses allowed or grants payable. R.S.O. 1970, c. 109, s. 5 (2); 1972, c. 1, s. 1;

Fees

(3) A program may require that fees be paid by persons engaged in the branch of agriculture or food to which the program applies and may fix the amounts thereof. R.S.O. 1970, c. 109, s. 5 (3).

**Guarantee
of loans**

6.—(1) Upon the recommendation of the Minister, the Lieutenant Governor in Council may, upon such terms as he considers proper, agree to guarantee and may guarantee the payment of any loan or loans or any part thereof, together with interest thereon, made to farmers for the encouragement of any branch of agriculture or food and any such guarantee may, without limiting the generality of the foregoing,

- (a) limit the amount of any individual loan to which the guarantee shall apply;
- (b) define the class or classes of farmers to whom any such loan may be made; and
- (c) define the purposes for which application may be made by farmers for any such loan.

**Form of
guarantee**

(2) The form and manner of any such guarantee shall be such as the Lieutenant Governor in Council approves and the guarantee shall be signed by the Treasurer of Ontario and Minister of Economics who may sign as Treasurer of Ontario, or by such other officer or officers as are designated by the Lieutenant Governor in Council and, upon being so signed, the Province of Ontario is liable for the payment of the loan or part thereof and interest thereon guaranteed according to the terms of the guarantee.

**Payment
of interest**

(3) Where a guarantee is given under subsection (1), the Lieutenant Governor in Council may, upon the recommendation of the Minister, authorize the payment by the Province of Ontario of the whole or any part of the interest on any such loan for the whole or any part of the term of the guarantee.

**Payment of
guarantee,
interest**

(4) The Lieutenant Governor in Council may make arrangements for supplying the moneys necessary to fulfil the requirements of any guarantee or to provide for payment of interest under subsection (3), and to advance the amount necessary for that purpose out of the public funds of the Province of Ontario.

**Payment
of loss
sustained**

(5) Where a guarantee is given under subsection (1), the Lieutenant Governor in Council may, subject to such terms

and conditions as he may prescribe, authorize the payment by the Province of Ontario out of the moneys appropriated therefor by the Legislature, of the whole or any part of the loss sustained by a person to whom a guarantee is given in collecting or attempting to collect moneys payable under a loan that is made pursuant to a guarantee and that is in default.

(6) Payment of loss under subsection (5) is limited to,

Payment
of loss
limited

- (a) fees, disbursements, allowances or charges owing by the person to whom the guarantee is given to his solicitor respecting matters for which costs may be taxed under the Rules of Practice of the Supreme Court of Ontario; and
- (b) expenses, other than those referred to in clause (a), that are reasonably and necessarily incurred in the course of collecting or attempting to collect moneys payable under a loan that is made pursuant to the guarantee and that is in default. 1972, c. 135, s. 1.

7. Where a program has been established under section 5 to provide for veterinary services in one or more than one territorial district and a veterinary agricultural committee has been established, any municipality may make grants to a veterinary fund, administered by the veterinary agricultural committee, from which payments are made to provide for the veterinary services in the territorial district. R.S.O. 1970, c. 109, s. 6.

Grants to
veterinary
fund

8. Where any work of the Ministry is carried on elsewhere than at the seat of Government, the Minister may appoint such officers, clerks, servants and labourers as he considers necessary and may fix their salaries or other remuneration, and may designate the appropriation against which the same shall be charged, and the same are payable out of such appropriation accordingly. R.S.O. 1970, c. 109, s. 7; 1972, c. 1, s. 1.

Appointment
and re-
muneration
of outside
employees

9. The Minister shall in each year submit to the Lieutenant Governor in Council a report of the proceedings of the Ministry during the next preceding fiscal year, and such report shall be laid before the Assembly forthwith, but, if the Legislature is not at the time in session, then within thirty days after the commencement of the next session. R.S.O. 1970, c. 109, s. 8; 1972, c. 1, s. 1.

Annual
report

10.—(1) The Agricultural Licensing and Registration Review Board is continued and shall consist of not fewer than five persons appointed by the Lieutenant Governor in Council.

Board
continued

Chairman
and vice-
chairman

(2) The Lieutenant Governor in Council may appoint one of the members of the Board as chairman and one or more of the remaining members as vice-chairman.

Alternate
chairman

(3) Where there is more than one vice-chairman, the Lieutenant Governor in Council shall designate one of the vice-chairmen as alternate chairman.

Assignment
to divisions
of Board

(4) The chairman, or in the case of his absence or inability to act, the alternate chairman, shall from time to time assign the members of the Board to divisions thereof and may change any such assignment at any time.

Member may
complete
duties, etc.

(5) Where a member of the Board resigns or his term of office has expired, he may carry out and complete any duties or responsibilities and exercise any powers that he would have had if he had not ceased to be a member, in connection with any matters in respect of which there was any proceeding in which he participated as a member of the Board.

Quorum

(6) The chairman or a vice-chairman and two members constitute a quorum and are sufficient for the exercise of all the jurisdiction and powers of the Board.

Board may
sit in
divisions

(7) The Board may sit in two or more divisions simultaneously so long as a quorum of the Board is present in each division.

Decisions

(8) The decision of the majority of the members of the Board present and constituting a quorum is the decision of the Board, but, if there is no majority, the decision of the chairman or vice-chairman presiding governs.

Practice and
procedure
R.S.O. 1980,
c. 484

(9) The Board may, subject to the *Statutory Powers Procedure Act*, and to the provisions of the Act under which a hearing is held, determine its own practice and procedure.

Remuneration

(10) Members of the Board who are not officers in the public service of Ontario shall receive such remuneration and expenses as the Lieutenant Governor in Council from time to time determines. 1978, c. 100, s. 1, *part*.

Tribunal
continued

11.—(1) The Farm Products Appeal Tribunal is continued and shall consist of not fewer than five persons appointed by the Lieutenant Governor in Council.

Chairman
and vice-
chairman

(2) The Lieutenant Governor in Council may appoint one of the members of the Tribunal as chairman and one or more of the remaining members as vice-chairman.

(3) Where there is more than one vice-chairman, the Lieutenant Governor in Council shall designate one of the vice-chairmen as alternate chairman. Alternate chairman

(4) The chairman, or in the case of his absence or inability to act, the alternate chairman, shall from time to time assign the members of the Tribunal to divisions thereof and may change any such assignment at any time. Assignment to divisions of Tribunal

(5) Where a member of the Tribunal resigns or his term of office has expired, he may carry out and complete any duties or responsibilities and exercise any powers that he would have had if he had not ceased to be a member, in connection with any matters in respect of which there was any proceeding in which he participated as a member of the Tribunal. Member may complete duties, etc.

(6) The chairman or vice-chairman and two members constitute a quorum and are sufficient for the exercise of all of the jurisdiction and powers of the Tribunal. Quorum

(7) The Tribunal may sit in two or more divisions simultaneously so long as a quorum of the Tribunal is present in each division. Tribunal may sit in divisions

(8) The decision of the majority of the members of the Tribunal present and constituting a quorum is the decision of the Tribunal, but, if there is no majority, the decision of the chairman or vice-chairman presiding governs. Decisions

(9) The Tribunal may, subject to this Act and the *Statutory Powers Procedure Act*, determine its own practice and procedure. Practice and procedure R.S.O. 1980, c. 484

(10) Members of the Tribunal who are not officers in the public service of Ontario shall receive such remuneration and expenses as the Lieutenant Governor in Council from time to time determines. 1978, c. 100, s. 1, *part*. Remuneration

12. In sections 13, 14 and 15,

Interpretation

(a) "Board" means The Farm Products Marketing Board;

(b) "Commission" means The Milk Commission of Ontario;

(c) "Director" means the Director appointed under the *Milk Act*; R.S.O. 1980, c. 266

(d) "local board" means a local board constituted under the *Farm Products Marketing Act*; R.S.O. 1980, c. 158

(e) "marketing board" means a marketing board constituted under the *Milk Act*;

(f) "Tribunal" means the Farm Products Appeal Tribunal. 1978, c. 100, s. 1, *part*.

Appeal to
Tribunal

13.—(1) Subject to subsection (4), where a person considers himself aggrieved by any order, direction or decision of the Board, the Commission or the Director, made under the *Farm Products Marketing Act* or the *Milk Act*, as the case may be, he may appeal to the Tribunal by serving upon the Tribunal written notice of the appeal.

R.S.O. 1980,
cc. 158, 266

Idem

(2) Subject to subsections (4) and (5), where any person considers himself aggrieved by any order, direction, decision or regulation made under the *Farm Products Marketing Act* by a local board or under the *Milk Act* by a marketing board, he may appeal to the Tribunal by serving upon the Tribunal written notice of the appeal.

Contents
of notice

(3) Every notice under subsection (1) or (2) shall contain a statement of the matter being appealed and the name and address of the person making the appeal.

Tribunal
may refuse
to hear
appeal

(4) Notwithstanding anything in this section, the Tribunal, in respect of an appeal commenced after the 1st day of February, 1979, may refuse to hear the appeal or, after a hearing has commenced, refuse to continue the hearing or make a decision if it relates to any order, direction, decision or regulation of which the appellant has had knowledge for more than two years before the notice is served under subsection (1) or (2) or, if in its opinion,

- (a) the subject-matter of the appeal is trivial;
- (b) the appeal is frivolous or vexatious or is not made in good faith; or
- (c) the appellant has not a sufficient personal interest in the subject-matter of the appeal.

Application
for recon-
sideration
of order, etc.

(5) No appeal may be taken from any order, direction, decision or regulation of a local board or a marketing board unless,

- (a) the appellant has first applied to the local board or marketing board for reconsideration thereof under section 14 and the local board or marketing board has refused to grant, in whole or in part, the relief requested by the appellant; or
- (b) the appellant and the local board or marketing board have waived their respective rights under section 14 in writing.

(6) Upon receipt of a notice under subsection (1) or (2), the Tribunal shall forthwith notify the Board, the Commission, the local board, the marketing board or the Director where any such body or the Director has an interest in the subject-matter of the appeal and such body or the Director, as the case may be, shall thereupon forthwith provide the Tribunal with all relevant by-laws, documents or other materials, of any kind whatsoever, in its or his possession. Persons entitled to notice

(7) In any appeal under subsection (1) or (2), the Tribunal shall, within seven days after the notice referred to in subsection (1) or (2) is received, serve notice upon the person making the appeal and upon any body entitled to receive notice under subsection (6) or the Director, as the case may be, of the date, time and place at which the appeal will be heard. Notice of date, etc., of hearing

(8) The Tribunal shall hear and decide any appeal under subsection (1) or (2) within thirty days after the date set for the hearing, but the Tribunal may, at the request of any party to the proceedings, adjourn the hearing from time to time for such period or periods of time as the Tribunal considers just. Hearing of appeal

(9) At any hearing under this section, the person making the appeal and any person entitled to receive notice under subsection (6) are parties to the appeal and the *Statutory Powers Procedure Act* applies. Parties R.S.O. 1980, c. 484

(10) Upon an appeal to the Tribunal under subsection (1) or (2), the Tribunal may by order direct the Board, the Commission, the local board, the marketing board or the Director, as the case may be, to take such action as it or he is authorized to take under the *Farm Products Marketing Act* or the *Milk Act* and as the Tribunal considers proper, and for this purpose the Tribunal may substitute its opinion for that of the Board, the Commission, the local Board, the marketing board or the Director. Powers of Tribunal on appeal R.S.O. 1980, cc. 158, 266

(11) The Tribunal shall, within ten days after the hearing is completed, serve notice of its decision upon all parties to the appeal and upon the Minister. Notice of decision

(12) A proceeding that is in substantial compliance with this section is not open to objection on the ground that it is not in strict compliance therewith. Objection to proceeding

(13) Where a notice is served under this section, it may be served personally or, Service of notice

(a) where the notice is served on the Board, the Commission, the local board, the marketing board, the Tribunal or the Director, by mailing the notice

to it or him at its or his usual business address;
or

- (b) where the notice is served on a person making an appeal, by mailing the notice to the address shown in his notice of appeal.

Tribunal
may reopen
hearing

(14) After the Tribunal has decided an appeal under this section, the Tribunal may reopen the hearing on its own motion and make a new decision, and the procedure for an appeal under this section applies to the rehearing. 1978, c. 100, s. 1, *part*.

Request for
reconsider-
ation of order,
etc.

14.—(1) Where any person considers himself aggrieved by an order, direction or decision of the Board, the Commission, a local board, a marketing board, the Tribunal or the Director, he may by written application therefor request it or him to reconsider such order, direction or decision.

Decision not
to be varied
without
hearing

(2) On any application under subsection (1), the body considering the application or the Director, as the case may be, shall not vary or rescind its or his decision adversely to the interests of any person without holding a hearing to which such person is a party and may make such decision after such hearing as it or he considers proper under any law applicable thereto.

Request for
reconsider-
ation of
regulation

(3) Where any person is affected by any regulation made by a local board or a marketing board, he may request the local board or marketing board, as the case may be, to reconsider the regulation by serving upon the local board or the marketing board written notice of the request.

Idem

(4) Where any person is affected by any regulation made by the Board or the Commission, he may request the Board or the Commission to reconsider the regulation by serving upon the Board or the Commission written notice of the request.

Hearing

(5) On receipt of a notice under subsection (3) or (4), the body considering the request shall hold, or shall afford to the person making the request an opportunity for, a hearing.

R.S.O. 1980,
c. 484
applies

(6) The *Statutory Powers Procedure Act* applies to a hearing under this section. 1978, c. 100, s. 1, *part*.

Powers of
Minister

15.—(1) Within thirty days after receipt by the Minister of a decision of the Tribunal under this Act or within such longer period as may be determined by the Minister within such thirty day period, the Minister may,

- (a) vary the whole or any part of the decision;
- (b) substitute for the decision of the Tribunal such decision as he considers appropriate; or
- (c) by notice to the Tribunal require the Tribunal to hold a new hearing of the whole or any part of the matter appealed to the Tribunal and reconsider its decision.

(2) Subject to subsection (3), a decision of the Tribunal is final after the expiration of the period or periods mentioned in subsection (1) unless, under subsection (1), the decision is varied or a decision is substituted for the decision of the Tribunal or a new hearing is required. Decision is final

(3) A decision of the Tribunal that has been varied under clause (a) or that has been substituted for the decision of the Tribunal under clause (1) (b) is final. Idem

(4) The Minister shall give notice, together with written reasons therefor, of any variation, substitution or requirement of a new hearing under subsection (1) to all parties to the appeal and to the Tribunal. 1978, c. 100, s. 1, *part*. Notice to be given by Minister

CHAPTER 271

Ministry of the Attorney General Act

1. In this Act, "Ministry" means the Ministry of the ^{Interpre-} Attorney General. 1972, c. 1, s. 9 (2). ^{tation}

2.—(1) The ministry of the public service known as the ^{Ministry} Ministry of the Attorney General is continued. 1972, c. 1, ^{continued} s. 9 (3); 1972, c. 1, ss. 1, 2, *revised*.

(2) The Attorney General shall preside over and have charge ^{Attorney} of the Ministry. R.S.O. 1970, c. 116, s. 2 (2); 1972, c. 1, ss. 1, ^{General to} have charge 9 (6).

3.—(1) The Lieutenant Governor in Council shall appoint ^{Deputy} a Deputy Attorney General who shall be the deputy head of ^{Attorney} the Ministry. R.S.O. 1970, c. 116, s. 3 (1); 1972, c. 1, ss. 1, ^{General} 9 (4).

(2) Such officers, clerks and servants may be appointed ^{Staff} under the *Public Service Act* as are required from time to ^{R.S.O. 1980,} time for the proper conduct of the business of the Ministry. ^{c. 418} R.S.O. 1970, c. 116, s. 3 (2); 1972, c. 1, s. 1.

4. The moneys required for the purposes of the Ministry ^{Moneys} shall be paid out of the moneys appropriated therefor by the ^{required by} Legislature. R.S.O. 1970, c. 116, s. 4; 1972, c. 1, s. 1. ^{Ministry}

5. The Attorney General,

Functions

- (a) is the Law Officer of the Executive Council;
- (b) shall see that the administration of public affairs is in accordance with the law;
- (c) shall superintend all matters connected with the administration of justice in Ontario;
- (d) shall perform the duties and have the powers that belong to the Attorney General and Solicitor General of England by law or usage, so far as those duties and powers are applicable to Ontario, and also shall perform the duties and have the powers that, up to the time of the *British North America Act, 1867* came into effect, belonged to the offices of the

Attorney General and Solicitor General in the provinces of Canada and Upper Canada and which, under the provisions of that Act, are within the scope of the powers of the Legislature;

- (e) shall advise the Government upon all matters of law connected with legislative enactments and upon all matters of law referred to him by the Government;
- (f) shall advise the Government upon all matters of a legislative nature and superintend all Government measures of a legislative nature;
- (g) shall advise the heads of the ministries and agencies of Government upon all matters of law connected with such ministries and agencies;
- (h) shall conduct and regulate all litigation for and against the Crown or any ministry or agency of Government in respect of any subject within the authority or jurisdiction of the Legislature;
- (i) shall superintend all matters connected with judicial offices;
- (j) shall perform such other functions as are assigned to him by the Legislature or by the Lieutenant Governor in Council. R.S.O. 1970, c. 116, s. 5; 1972, c. 1, ss. 2, 9 (5, 6).

Designation
of ministerial
legal
officers as
employees of
Ministry

6. The Lieutenant Governor in Council may designate any employee in any ministry or agency of Government who is a member of the bar of Ontario to be an employee of the Ministry and thereupon such employee becomes an employee of the Ministry. R.S.O. 1970, c. 116, s. 6; 1972, c. 1, ss. 1, 2.

Annual
report

7. The Attorney General after the close of each year shall submit to the Lieutenant Governor in Council an annual report upon the affairs of the Ministry and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. R.S.O. 1970, c. 116, s. 7; 1972, c. 1, ss. 1, 9 (6).

Deemed
to include
other
reports

8.—(1) After this subsection comes into force, all annual reports required to be submitted to the Lieutenant Governor, the Lieutenant Governor in Council or the Assembly by the Attorney General or an official of the Ministry under any other Act shall be deemed to be included in the report submitted

under section 7 and need not be submitted in accordance with such other Act. R.S.O. 1970, c. 116, s. 8 (1); 1972, c. 1, ss. 1, 9 (6).

(2) Subsection (1) does not come into force until a day to be named by proclamation of the Lieutenant Governor. R.S.O. 1970, c. 116, s. 8 (2).

Commence-
ment of
subs. (1)

CHAPTER 272

Ministry of Colleges and Universities Act

1. In this Act,

Interpre-
tation

(a) "Minister" means the Minister of Colleges and Universities;

(b) "Ministry" means the Ministry of Colleges and Universities. 1972, c. 1, s. 12 (2).

2.—(1) The Ministry of Colleges and Universities is con- Ministry
tinued. 1972, c. 1, s. 12 (3), *revised*. continued

(2) The Minister shall preside over and have charge of the Duties of
Ministry and is responsible for the administration of this Minister
and such other Acts and the regulations made thereunder
as are assigned to him by the provisions thereof or by the
Lieutenant Governor in Council. 1971, c. 66, s. 2 (2); 1972,
c. 1, s. 1.

3.—(1) The Lieutenant Governor in Council may appoint Deputy
a Deputy Minister of the Ministry. 1971, c. 66, s. 3 (1); 1972, Minister
c. 1, s. 1.

(2) Such officers, clerks and servants may be appointed Staff
under the *Public Service Act* as are considered necessary from R.S.O. 1980,
time to time for the proper conduct of the business of the Minis- c. 418
try. 1971, c. 66; s. 3 (2); 1972, c. 1, s. 1.

(3) The Lieutenant Governor in Council may appoint such Advisory
advisory committees or other consulting bodies as are considered bodies
necessary from time to time. 1971, c. 66, s. 3 (3).

4. The Minister may determine the amount of any capital Capital
expenditure of a university or a college of applied arts and expenditures
technology or of Ryerson Polytechnical Institute or the Ontario financed
College of Art that may be financed through The Ontario through
Universities Capital Aid Corporation, and debentures may be purchased The Ontario
from a university or a college of applied arts and technology or Universities
from Ryerson Polytechnical Institute or the Ontario College of Art Capital Aid
by the Corporation only on the recommendation of the Minister Corporation
ter. 1973, c. 86, s. 1, *part, revised*.

Colleges of
applied arts
and
technology

5.—(1) Subject to the approval of the Lieutenant Governor in Council, the Minister may establish, name, maintain, conduct and govern colleges of applied arts and technology that offer programs of instruction in one or more fields of vocational, technological, general and recreational education and training in day or evening courses and for full-time or part-time students.

Council of
Regents

(2) The Minister shall be assisted in the planning, establishment and co-ordination of programs of instruction and services for such colleges by a council to be known as the Ontario Council of Regents for Colleges of Applied Arts and Technology composed of such members as may be appointed by the Lieutenant Governor in Council.

Boards of
governors,
advisory
committees

R.S.O. 1980,
c. 95

(3) There shall be a board of governors for each college of applied arts and technology, which shall be a corporation with such name as the Minister may designate and shall be composed of such members and have such powers and duties, in addition to those under the *Corporations Act* as varied by the regulations, as may be provided by the regulations, and each board shall be assisted by an advisory committee for each branch of a program of instruction offered in the college other than programs of instruction referred to in subsection (5).

Agreements

(4) For the purposes of subsection (1) and subject to the approval of the Minister, a board of governors may enter into an agreement with any organization representing one or more branches of industry or commerce or with any professional organization.

Idem

(5) Subject to the approval of the Minister, a board of governors of a college may enter into an agreement with a university for the establishment, maintenance and conduct by the university in the college of programs of instruction leading to degrees, certificates or diplomas awarded by the university.

Cost of
establish-
ment and
maintenance

(6) The cost of the establishment, maintenance and conduct of a college shall be payable out of moneys appropriated therefor by the Legislature and out of moneys received from Canada for the purposes of technical education or other programs of instruction of the college, moneys contributed by organizations that have entered into agreements with the board of governors of the college, fees paid by students and moneys received from other sources.

Regulations

(7) The Minister, subject to the approval of the Lieutenant Governor in Council, may make regulations with respect to colleges of applied arts and technology,

- (a) providing for the composition of the Ontario Council of Regents for Colleges of Applied Arts and Technology;
- (b) providing for the composition of the boards of governors on a suitably representative basis and of the advisory committees thereof and for the appointment of the members of such boards and committees;
- (c) prescribing the powers and duties of boards of governors and advisory committees, the manner of calling and conducting the meetings thereof and the procedure for the election or appointment of chairmen and officers;
- (d) prescribing the type, content and duration of programs of instruction to be offered;
- (e) prescribing the requirements for admission to any program of instruction, and prescribing the terms and conditions upon which students may remain in, or be discharged from, any program of instruction;
- (f) for the granting of certificates and diplomas of standing following successful completion of any program of instruction;
- (g) prescribing the qualifications and conditions of service of members of the teaching staffs of such colleges;
- (h) providing for the payment of travelling allowances or expenses to members of the Ontario Council of Regents for Colleges of Applied Arts and Technology, boards of governors and advisory committees, and of the officers and employees of such colleges;
- (i) providing for a payment of a *per diem* allowance to the members, except the chairman, of the Ontario Council of Regents for Colleges of Applied Arts and Technology;
- (j) requiring students to pay registration, tuition and laboratory fees in respect of any program of instruction, and fixing the amounts and manner of payment thereof;
- (k) providing for the admission of persons from outside Ontario, and prescribing fees payable by such persons in respect of any program of instruction and the manner of payment thereof.

**Application
of regulations**

(8) No regulation made under subsection (7) applies to a university or to programs of instruction given by a university in such colleges.

**Remunera-
tion of
chairman**

(9) The chairman of the Ontario Council of Regents for Colleges of Applied Arts and Technology shall be paid such remuneration and shall be entitled to such other benefits as may be determined by the Lieutenant Governor in Council. 1971, c. 66, s. 6 (1-9).

**Grants to
historical
institutions**

6. The Lieutenant Governor in Council may make regulations providing for the apportionment and distribution of moneys appropriated by the Legislature for the maintenance, development and promotion of historical institutions, and providing for the conditions governing the payment thereof. 1972, c. 1, s. 12 (5); 1972, c. 114, s. 2, *part*.

Regulations

7. Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations,

- (a) prescribing the terms and conditions under which awards or grants provided out of the moneys appropriated by the Legislature may be made to students enrolled in post-secondary institutions, prescribing the amounts of such awards and the methods of calculation thereof and the persons eligible therefor, defining the types, classes and sub-classes of awards and grants, fixing the maximum amount that may be awarded or granted to any applicant and authorizing the Minister to determine the amount, up to the maximum that may be awarded or granted, to an applicant;
- (b) providing for the recovery of all or any of the moneys awarded or granted to any student enrolled or purporting to be enrolled in a post-secondary institution who was not eligible for the award or grant or who fails to comply with any of the terms and conditions under which such moneys were awarded or granted;
- (c) providing for the apportionment and distribution of moneys appropriated or raised by the Legislature for university, college and other post-secondary educational purposes;
- (d) prescribing the conditions governing the payment of legislative grants;

- (e) defining "enrolment" and "student" for the purpose of legislative grants to post-secondary educational institutions recognized by the Minister for the purpose of such grants, and requiring that "enrolment" be subject to the approval of the Minister;
- (f) prescribing forms and providing for their use;
- (g) authorizing the Deputy Minister of Colleges and Universities or any officer of the Ministry to exercise the power to approve loans under section 8. 1972, c. 114, s. 3; 1973, c. 86, s. 2.

8.—(1) Upon the recommendation of the Minister, the Lieutenant Governor in Council may, upon such terms as he considers proper, agree to guarantee and may guarantee the payment of any loan and the interest thereon made by a chartered bank to which the *Bank Act* (Canada) applies, or by a credit union, as defined in the *Credit Unions and Caisses Populaires Act* to a student of a university, college of applied arts and technology or other post-secondary institution in Ontario where,

Guarantee of loans

1980-81
c. 40 (Can.)

R.S.O. 1980,
c. 102

- (a) the loan is made to such student pursuant to an application made by the student in the form prescribed by the regulations; and
- (b) the loan is approved by the Minister or by a person authorized for such purpose by the regulations. 1973, c. 86, s. 3, *part*; 1980, c. 6, s. 7 (1).

(2) The form and manner of the guarantee shall be such as the Lieutenant Governor in Council approves, and the guarantee shall be signed by the Treasurer of Ontario or such other officers as are designated by the Lieutenant Governor in Council, and, upon being so signed, the Province of Ontario is liable for the payment of the loan and interest thereon guaranteed according to the terms of the guarantee, and any guarantee so signed is evidence that the terms of this section have been complied with.

Form of guarantee

(3) The Lieutenant Governor in Council may make arrangements for supplying the money necessary to fulfil the requirements of any guarantee and to advance the amount necessary for that purpose out of the public funds of the Province of Ontario. 1973, c. 86, s. 3, *part*.

Payment of guarantee

9.—(1) Where a loan is made under section 8, the Minister shall pay to a chartered bank or credit union in respect of

Minister to pay interest

each guaranteed student loan that a student borrower is obliged to repay to that bank or credit union interest thereon at the rate and for the period prescribed by the regulations and no interest is payable by a student on such guaranteed student loan in respect of such period. 1975, c. 29, s. 1, *part*; 1980, c. 6, s. 7 (2).

Regulations

(2) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the rate of interest payable by the Minister or a student borrower to a bank or credit union on a guaranteed student loan;
- (b) prescribing the period that may lapse after which the principal amount of a guaranteed student loan and interest thereon shall commence to be payable by the student borrower;
- (c) respecting the subrogation of Her Majesty in right of Ontario to the rights of a bank or credit union with respect to a guaranteed student loan;
- (d) prescribing procedures to be followed by a bank or credit union with respect to a guaranteed student loan;
- (e) prescribing the provisions to be included in agreements between borrowers and banks or credit unions related to guaranteed student loans;
- (f) providing for the alteration of agreements between borrowers and banks or credit unions and prescribing the conditions and consequences of such alterations;
- (g) providing for the assignment or transfer by banks or credit unions of agreements between borrowers and banks or credit unions and prescribing the conditions and consequences of such assignments or transfers;
- (h) prescribing, in the event of default in the repayment of a guaranteed student loan, the measures to be taken by a bank or credit union and the procedures to be followed for the collection of the amount of the loan outstanding and accrued interest;
- (i) prescribing the method of determining the amount of any loss sustained by a bank or credit union as a result of a guaranteed student loan;
- (j) prescribing the procedure to be followed by a bank or credit union in making a claim against the Minister;

- (k) prescribing the maximum number of years that may elapse after which the principal amount of a guaranteed student loan and interest thereon shall commence to be payable by the borrower;
- (l) providing for reports to be made to the Minister for the purposes of this Act, and prescribing the kind of information to be included in those reports. 1975, c. 29, s. 1, *part*; 1980, c. 6, s. 7 (3, 4).

10. The expenses of the Ministry shall be paid out of the ^{Expenses} moneys appropriated therefor by the Legislature. 1971, c. 66, s. 7; 1972, c. 1, s. 1.

CHAPTER 273

Ministry of Community and
Social Services Act

1. In this Act,

Interpre-
tation

- (a) "Board of Review" means the Social Assistance Review Board referred to in section 11;
- (b) "Minister" means the Minister of Community and Social Services;
- (c) "Ministry" means the Ministry of Community and Social Services;
- (d) "regulations" means the regulations made under this Act. 1972, c. 1, s. 19 (2), *part*; 1974, c. 95, s. 1.

2.—(1) The Ministry of Community and Social Services is continued. Ministry
continued

(2) The Minister shall preside over and have charge of the Ministry. 1972, c. 1, s. 19 (2), *part, revised*. Minister
to have
charge

3.—(1) The Minister is responsible for the administration of this Act and the regulations thereunder and the Acts and regulations made thereunder that are assigned or transferred to him by the Legislature or by the Lieutenant Governor in Council. R.S.O. 1970, c. 120, s. 3 (1). Responsi-
bility of
Minister

(2) The Minister, with the approval of the Lieutenant Governor in Council, may, on behalf of the Government of Ontario, make agreements with the Crown in right of Canada respecting, Agreements

- (a) any matter for the administration of which the Minister is responsible; and
- (b) the payment by Canada to Ontario of any portion of any expenditures made before or after this Act comes into force by Ontario or by any municipality under any Act of Ontario. 1973, c. 41, s. 1.

4.—(1) A Deputy Minister of Community and Social Services may be appointed by the Lieutenant Governor in Council. Deputy
Minister

Staff

R.S.O. 1980,
c. 418

(2) Such officers, clerks and servants as the Minister considers necessary for the proper conduct of the business of the Ministry may be appointed under the *Public Service Act*. 1972, c. 56, s. 1.

Protection
from
personal
liability

(3) No action or other proceeding for damages shall be instituted against the Deputy Minister or any other officer or employee of the Ministry or anyone acting under his authority for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in good faith of his duty.

Liability
of Crown
R.S.O. 1980,
c. 393

(4) Subsection (3) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (3) to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection (3) had not been enacted. 1974, c. 95, s. 2.

Delegation
by Minister

5. Where, under this or any other Act, a power is conferred or a duty is imposed upon the Minister or upon another officer or an employee of the Ministry, such power or duty may be exercised and discharged by any other person or class of persons whom the Minister appoints in writing, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in his appointment. 1974, c. 95, s. 3.

Duties of
Minister

6. The Minister may,

- (a) institute inquiries into and collect information and statistics relating to or affecting any matter for the provision or promotion of community and social services;
- (b) disseminate from time to time information, in such manner and form as he considers suitable, for the promotion of community and social services;
- (c) secure the observance and execution of all Acts and regulations for the administration of which he is responsible; and
- (d) direct any officer of the Ministry or any other person to investigate and inquire into and report to him upon any activity, matter, agency, organization, association or institution having for any of its objects or relating to or affecting the social welfare of persons in Ontario and that is not under the jurisdiction of any other ministry of the public service of Ontario. R.S.O. 1970, c. 120, s. 6; 1972, c. 1, ss. 1, 2, 19 (4).

7. The Lieutenant Governor in Council or the Minister may, out of moneys appropriated therefor by the Legislature, direct payment from time to time of grants and contributions for consultation, research and evaluation services with respect to programs of social services, community services and social planning and for the provision, encouragement and development of credit counselling services and other social or community services. 1972, c. 56, s. 2; 1972, c. 149, s. 1; 1975, c. 26, s. 1.

8. The Minister may enter into agreements with organizations, municipalities or other persons or corporations respecting the provision of social services and community services including items, facilities and personnel relating thereto upon such terms and conditions as may be agreed and he may direct out of moneys appropriated by the Legislature the payment of such expenditures as are necessary for such purposes. 1972, c. 149, s. 2, *part*; 1974, c. 95, s. 5.

9.—(1) Where any institution or organization is operated or managed for charitable objects or purposes and where,

- (a) the persons operating and managing the institution so request; or
- (b) the institution or organization procures funds for its operation from the public and the Lieutenant Governor in Council considers it necessary to ensure proper application of such funds; or
- (c) any approval, licence or registration for the operation of the institution or organization required by any Act administered by the Minister, has been refused or revoked; or
- (d) the Lieutenant Governor in Council considers it necessary in the best interests of those residing in or relying on the services of such institution or organization and for their immediate protection,

the Lieutenant Governor in Council may make regulations,

- (e) designating such institution or organization to be subject to the control of the Minister;
- (f) governing the operation and activities of any institution or organization designated under clause (e) and the procuring of funds from the public and the application thereof by such institution or organization;
- (g) authorizing the Minister to operate and manage any such institution or organization designated under

R.S.O. 1980,
c. 148

clause (e) and for that purpose, notwithstanding sections 25 and 41 of the *Expropriations Act*, authorizing the Minister to immediately occupy and operate, or arrange for the occupation and operation by a person or organization designated by him, any premises occupied or used by such institution or organization, but the rights of the owner under that Act, except the right to possession, shall not be affected thereby.

Warrant for
entry and
occupation

(2) Where the Minister has been authorized under this section to occupy any premises, if the persons in occupation refuse to permit the Minister or persons authorized by him for that purpose to enter upon and occupy the premises or resist such entry, the Minister may apply *ex parte* to a judge of the county or district court of the county or district in which the premises are situate for a warrant directing the sheriff to put the Minister or persons authorized by him in occupation of the premises and the judge, upon being satisfied that the Minister is so authorized to occupy the premises and of such refusal or resistance, may issue such warrant and the sheriff shall forthwith execute the warrant and make a return to the judge of the execution thereof.

Period of
occupation

(3) Except with the consent of the person operating and managing an institution, the Minister shall not occupy and operate or arrange for the occupation and operation of the premises of an institution under subsection (1) for a period longer than a year, but the Lieutenant Governor in Council may from time to time extend such period. 1971, c. 50, s. 30.

Establish-
ment of
charitable
institutions
by Minister

10. The Minister, with the approval of the Lieutenant Governor in Council, may establish, with real and personal property acquired by Her Majesty by way of gift or donation, any institution that may be operated or managed for charitable objects or purposes under any Act administered by the Minister, and the Minister may by way of lease or agreement provide for the management and operation on a non-profit basis of the institution by any person or organization with authority therefor under such Act subject to the provisions of such Act and the regulations thereunder and upon such terms and conditions as may be agreed upon. 1972, c. 149, s. 2, *part*.

Board of
Review

11.—(1) The Social Assistance Review Board is continued and shall conduct such hearings and perform such duties as are assigned to it by or under this or any other Act.

Members of
Board

(2) The Board of Review shall be composed of not more than such number of members as is prescribed by the regulations who shall be appointed by the Lieutenant Governor in Council.

(3) One of the members of the Board of Review shall be appointed by the Lieutenant Governor in Council to be chairman of the Board of Review and one or more other of the members of the Board may be appointed by the Lieutenant Governor in Council to be vice-chairmen of the Board.

Chairman
and vice-
chairmen

(4) The members of the Board of Review shall be paid such remuneration and expenses as the Lieutenant Governor in Council from time to time determines.

Remunera-
tion

(5) Each member of the Board of Review shall hold office for three years.

Term of
office

(6) The chairman of the Board of Review may authorize one or more members of the Board to conduct a hearing and such member or members has or have all the powers of the Board for the purpose of such hearing and any decision of such member or members shall be a decision of the Board.

One or more
members may
conduct
hearing

(7) Such officers, clerks and servants as are from time to time considered necessary by the Lieutenant Governor in Council for the proper conduct of the business of the Board of Review may be appointed under the *Public Service Act*.

Staff

R.S.O. 1980,
c. 418

(8) Sittings of the Board of Review may be held at such places in Ontario and at such times as the Board considers most convenient for the proper discharge and speedy dispatch of its business.

Sittings

(9) Where,

Vice-
chairman

(a) the chairman of the Board of Review is absent or is unable to act, a vice-chairman designated by the chairman; or

(b) the office of the chairman of the Board of Review is vacant, a vice-chairman designated by the Minister,

has and shall exercise the jurisdiction and power of the chairman including the power to complete any unfinished matter. 1975, c. 95, s. 6, *part*.

12.—(1) Notwithstanding the *Statutory Powers Procedure Act*, all hearings of the Board of Review shall be heard in private.

Hearings
in private
R.S.O. 1980,
c. 484

(2) Subject to subsection (3), members of the Board of Review holding a hearing,

Members
holding
hearing
not to have
taken part
in prior
considera-
tion of
matter

- (a) shall not have taken part in any investigation or consideration of the subject-matter of the hearing prior to the hearing; and
- (b) shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate.

Legal
advice

(3) The Board of Review may seek legal advice from an adviser independent from the parties, and members of the Board may at any time consult with other members of the Board.

Recording of
evidence

(4) The oral evidence taken before the Board of Review at a hearing shall be recorded,

- (a) by notes taken by or under the supervision of the member or members of the Board conducting the hearing; or
- (b) in such other manner as such member or members may direct, in which case copies or a transcript shall, on request, be furnished upon the same terms as in the Supreme Court.

Findings
of fact

(5) The findings of fact of the Board of Review pursuant to a hearing under this section shall be based exclusively on evidence admissible and facts of which notice may be taken under sections 15 and 16 of the *Statutory Powers Procedure Act*.

R.S.O. 1980,
c. 484

Only
members at
hearing to
participate
in decision

(6) No member of the Board of Review shall make any decision of the Board following upon a hearing under this section unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present take part in the decision.

Financial
hardship

(7) Where a request for a hearing has been made and the Board of Review is satisfied that there may be financial hardship to a party or witness attending the hearing, the Board shall pay the party or witness travelling and living expenses necessary to enable his attendance at the hearing of the Board. 1974, c. 95, s. 6, *part*.

Regulations

13. The Lieutenant Governor in Council may make regulations designating the number of members of the Board of Review and prescribing its procedures. 1974, c. 95, s. 6, *part*.

CHAPTER 274

Ministry of Consumer and Commercial Relations Act

1. In this Act,

Interpre-
tation

- (a) "Deputy Minister" means the Deputy Minister of Consumer and Commercial Relations;
- (b) "Director" means the Director of the Consumer Protection Division of the Ministry;
- (c) "Minister" means the Minister of Consumer and Commercial Relations;
- (d) "Ministry" means the Ministry of Consumer and Commercial Relations;
- (e) "Registrar" means the Registrar under an Act administered by the Minister, other than the *Loan and Trust Corporations Act*; R.S.O. 1980, c. 249
- (f) "Tribunal" means The Commercial Registration Appeal Tribunal referred to in section 7. R.S.O. 1970, c. 113, s. 1; 1972, c. 1, ss. 1, 23 (2).

2. The ministry of the public service known as the Ministry of Consumer and Commercial Relations is continued. 1972, c. 1, s. 23 (3). Ministry continued

3. The Minister shall preside over and have charge of the Ministry. R.S.O. 1970, c. 113, s. 3; 1972, c. 1, s. 1. Minister to have charge

4. The Minister is responsible for the administration of this Act, any Acts that are assigned to him by the Legislature or by the Lieutenant Governor in Council, and the following Acts: Minister's Acts

- 1. *Bailiffs Act*. R.S.O. 1980, c. 37
- 2. *Collection Agencies Act*. R.S.O. 1980, c. 73
- 3. *Credit Unions and Caisses Populaires Act*. R.S.O. 1980, c. 102

R.S.O. 1980,
c. 116

4. *Deposits Regulation Act.*

R.S.O. 1980,
c. 218

5. *Insurance Act.*

R.S.O. 1980,
c. 221

6. *Investment Contracts Act.*

R.S.O. 1980,
c. 249

7. *Loan and Trust Corporations Act.*

R.S.O. 1980,
c. 255

8. *Marine Insurance Act.*

R.S.O. 1980,
c. 295

9. *Mortgage Brokers Act.*

R.S.O. 1980,
c. 299

10. *Motor Vehicle Dealers Act.*

R.S.O. 1980,
c. 388

11. *Prepaid Hospital and Medical Services Act.*

R.S.O. 1980,
c. 431

12. *Real Estate and Business Brokers Act.*

R.S.O. 1980,
c. 466

13. *Securities Act.* R.S.O. 1970, c. 113, s. 4; 1971, c. 21,
s. 1.

Assignment
of Acts to
Minister

5. The Lieutenant Governor in Council may assign the administration of any Act to the Minister, in which case the Minister may exercise the powers and shall perform the duties of the minister named in the Act so assigned so long as he administers such Act. R.S.O. 1970, c. 113, s. 5.

Assignment
of Minister's
Acts to
other
ministers

6. The Lieutenant Governor in Council may assign the administration of any Act that is being administered by the Minister to any other minister, in which case such other minister may exercise the powers and shall perform the duties of the minister named in the Act so assigned. R.S.O. 1970, c. 113, s. 6.

Commercial
Registration
Appeal
Tribunal

7.—(1) The tribunal known as The Commercial Registration Appeal Tribunal is continued and shall be composed of such members as are appointed under subsections (3) and (4).

Duties

(2) The Tribunal shall,

(a) advise the Minister on consumer affairs; and

(b) hold such hearings and perform such other duties as are assigned to it by or under any Act or regulation.

Members

(3) The Lieutenant Governor in Council shall appoint six members of the Tribunal and shall appoint one of such members, who shall be a full-time member, as chairman and may appoint one or more other such members as vice-chairmen. R.S.O. 1970, c. 113, s. 7 (1-3).

(4) The Lieutenant Governor in Council may, after con- ^{Idem}sultation with organizations or other bodies representative of the industries required to be registered under any Act under which hearings are assigned to the Tribunal, appoint a panel composed of persons engaged in each of such industries, who shall be members of the Tribunal. R.S.O. 1970, c. 113, s. 7 (4); 1979, c. 18, s. 1 (1).

(5) Each member of the Tribunal, other than a full-time member, shall be paid his reasonable and necessary expenses incurred in attending meetings and in the transaction of the business of the Tribunal and such remuneration as is fixed by the Lieutenant Governor in Council. ^{Remuneration and expenses}

(6) Subject to subsection (7), three members of the Tribunal, ^{Quorum}one of whom shall be the chairman or vice-chairman, constitute a quorum and may exercise all the powers of the Tribunal notwithstanding any vacancy in the membership.

(7) Where the Tribunal holds a hearing, at least one of the members shall be a person appointed under subsection (4) engaged in the industry governed by the Act under which the hearing is held. ^{Representative of industry} R.S.O. 1970, c. 113, s. 7 (5-7).

(8) Where the nature or size of an industry for which registration is required under an Act referred to in subsection (4) is such that a decision by one person engaged in the industry in respect of the affairs of another person engaged in the industry could not reasonably be made without the possibility of a conflict of interest, the Lieutenant Governor in Council may make regulations exempting the Act from the application of subsections (4) and (7). ^{Application of subss. (4) and (7)} 1979, c. 18, s. 1 (2).

(9) The chairman shall have general supervision and direction over the conduct of the affairs of the Tribunal, and shall arrange the sittings of the Tribunal and assign members to conduct hearings as circumstances require. ^{Duties of chairman}

(10) The chairman, with the approval of the Minister, may retain experts to advise the Tribunal in respect of any particular matter coming before it. ^{Experts}

(11) The Tribunal shall prepare and periodically publish a summary of its decisions and the reasons therefor. ^{Publishing reports}

(12) The Lieutenant Governor in Council may appoint a Registrar for the Tribunal who shall perform such duties as are assigned to him under this or any other Act or by the chairman of the Tribunal. ^{Registrar of the Tribunal}

Administra-
tion of
oaths

(13) The Registrar for the Tribunal and every member of the Tribunal have power to administer oaths and affirmations for the purpose of any of its proceedings. R.S.O. 1970, c. 113, s. 7 (8-12).

Protection
from
personal
liability

8. No action or other proceeding for damages shall be instituted against the Director, any member of the Tribunal or any Registrar, or anyone acting under the authority of such Director, member or Registrar, for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty. R.S.O. 1970, c. 113, s. 8.

Interim
appoint-
ments

9.—(1) Where a vacancy occurs in the office of Director or Registrar, or if the Director or a Registrar is unable to carry out his duties because of absence or illness, the Deputy Minister may appoint in writing an official of the Ministry to act as Director or Registrar until the Director or Registrar is duly appointed or returns to duty, but an appointment under this subsection shall not be made for a period of longer than six months. R.S.O. 1970, c. 113, s. 9 (1); 1972, c. 1, s. 1.

Idem

(2) Where a vacancy occurs in the office of chairman of the Tribunal or the chairman is unable to carry out his duties because of absence or illness, the Minister may appoint in writing a member of the Tribunal appointed under subsection 7 (3) to act as chairman until the chairman is duly appointed or returns to duty, but an appointment under this subsection shall not be made for a period of longer than six months. R.S.O. 1970, c. 113, s. 9 (2).

Application
of section

10.—(1) This section applies to proceedings before the Tribunal.

Members
holding
hearing not
to have
taken part in
investigation,
etc.

(2) Members of the Tribunal holding a hearing shall not have taken part in any investigation or consideration of the subject-matter of the hearing before the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the Tribunal may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

Notice of
hearing

(3) Where a hearing by the Tribunal is required,

(a) notice of the hearing shall afford to the person requiring the hearing a reasonable opportunity to

show or to achieve compliance before the hearing with all lawful requirements concerning the subject-matter of the hearing; and

- (b) the person requiring the hearing shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(4) The oral evidence taken before the Tribunal at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the payment of such fees therefor as the Lieutenant Governor in Council may prescribe by regulation. Recording of evidence

(5) The findings of fact of the Tribunal pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*. Findings of fact

R.S.O. 1980,
c. 484

(6) No member of the Tribunal shall participate in a decision of the Tribunal pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Tribunal shall be given unless all members so present participate in the decision. Only members at hearing to participate in decision

(7) Notwithstanding any limitation of time for the giving of any notice requiring a hearing by the Tribunal fixed by or under any Act, and where it is satisfied that there are *prima facie* grounds for granting relief and that there are reasonable grounds for applying for the extension, the Tribunal may extend the time for giving the notice either before or after expiration of the time so limited, and may give such directions as it considers proper consequent upon such extension. 1971, c. 50, s. 28, *part*. Extension of time for giving notice

11.—(1) Any party to proceedings before the Tribunal may appeal from its decision or order to the Divisional Court in accordance with the rules of court. Appeal from decision of Tribunal

(2) Where any party appeals from a decision of the Tribunal, the Tribunal shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of the evidence if it is not part of the Tribunal's record, shall constitute the record in the appeal. Record to be filed in court

(3) The Minister is entitled to be heard, by counsel or otherwise, upon the argument of an appeal under this section. 1971, c. 50, s. 28, *part*. Minister entitled to be heard

Idem

(4) Where a hearing is assigned to the Tribunal under an Act not administered by the Minister of Consumer and Commercial Relations, the minister administering the Act under which the hearing is assigned to the Tribunal is the minister entitled to be heard under subsection (3). 1979, c. 18, s. 2.

Powers of
court on
appeal

(5) An appeal under this section may be made on questions of law or fact or both and the court may exercise all the powers of the Tribunal, and for such purpose the court may substitute its opinion for that of the Registrar or of the Tribunal, or the court may refer the matter back to the Tribunal for rehearing, in whole or in part, in accordance with such directions as the court considers proper. 1971, c. 50, s. 28, *part*.

Officers
and staff
R.S.O. 1980,
c. 418

12. Such officers, clerks and servants may be appointed or transferred under the *Public Service Act* as are considered necessary from time to time for the proper conduct of the business of the Ministry. R.S.O. 1970, c. 113, s. 10; 1972, c. 1, s. 1.

Expenses of
Ministry

13. The expenses of the Ministry shall be paid out of the moneys appropriated therefor by the Legislature. R.S.O. 1970, c. 113, s. 12; 1972, c. 1, s. 1.

CHAPTER 275

Ministry of Correctional Services Act

1. In this Act,

Interpre-
tation

- (a) "Board" means the Board of Parole;
- (b) "compassionate allowance" means an allowance made under section 13 of this Act and the regulations;
- (c) "correctional institution" means a correctional institution established or continued under section 14 and does not include a training school established or authorized under the *Training Schools Act*, or a lock-up established under section 206 of the *Municipal Act*; R.S.O. 1980,
cc. 508, 302
- (d) "Deputy Minister" means the Deputy Minister of Correctional Services;
- (e) "inmate" means a person confined in a correctional institution or otherwise detained in lawful custody pursuant to a court order;
- (f) "Minister" means the Minister of Correctional Services;
- (g) "Ministry" means the Ministry of Correctional Services;
- (h) "parole" means authority granted to an inmate to be at large during the inmate's term of imprisonment;
- (i) "parolee" means an inmate who has been granted parole under this Act;
- (j) "probation" means the disposition of a court authorizing an offender to be at large subject to conditions prescribed in a probation order or a community service order;
- (k) "probation order" includes community service order;

- (*l*) "probationer" means a person who is bound by a probation order or a community service order;
- (*m*) "regulations" means the regulations made under this Act;
- (*n*) "remission" means statutory or earned remission, as the case requires. 1978, c. 37, s. 1.

PART I

MINISTRY OF CORRECTIONAL SERVICES

Ministry
continued

2.—(1) The ministry of the public service known as the Ministry of Correctional Services is continued.

Minister
to preside

(2) The Minister shall preside over and have charge of the Ministry.

Deputy
Minister

(3) The Lieutenant Governor in Council shall appoint a Deputy Minister of Correctional Services who shall be the deputy head of the Ministry. 1978, c. 37, s. 2.

Duties of
Minister

3. The Minister is responsible for the administration of this Act and any Acts that are assigned to him by the Legislature or by the Lieutenant Governor in Council. 1978, c. 37, s. 3.

Functions
of
Ministry

4. It is the function of the Ministry to supervise the detention and release of inmates, parolees and probationers and to create for such persons a social environment in which they may achieve changes in attitude by providing training, treatment and services designed to afford an inmate, parolee or probationer the opportunity for successful personal and social adjustment in the community, and, without limiting the generality of the foregoing, the objects of the Ministry are to,

- (a) provide for the secure custody of persons awaiting trial or convicted of an offence;
- (b) establish, maintain and operate correctional institutions;
- (c) provide programs and facilities designed to assist in the rehabilitation of inmates;
- (d) establish and operate a system of parole;

(e) provide probation services; and

(f) provide programs for the prevention of crime.
1978, c. 37, s. 4.

5. Such officers and employees as are required from ^{Staff} time to time for the proper conduct of the Ministry may be appointed under the *Public Service Act*. 1978, c. 37, s. 5. ^{R.S.O. 1980, c. 418}

6. The expenditures of the Ministry shall be paid out <sup>Expendi-
tures</sup> of moneys appropriated therefor by the Legislature. 1978, c. 37, s. 6.

7. Where, under this or any other Act, a power or duty <sup>Delegation
of
Minister's
powers</sup> is granted to or vested in the Minister, he may in writing delegate that power or duty to the Deputy Minister, or to any officer or officers of the Ministry, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in his delegation. 1978, c. 37, s. 7.

8.—(1) The Minister, with the approval of the Lieutenant <sup>Agree-
ments</sup> Governor in Council, may, on behalf of the Crown in right of Ontario, make agreements with the Crown in right of Canada or of any province of Canada or with any municipality respecting,

(a) the exchange of services provided by the Ministry;

(b) the transfer of inmates;

(c) any matter relating to the supervision and re-
habilitation of an inmate, parolee or probationer; or

(d) any matter for the administration of which the
Minister is responsible.

(2) The Minister, for and in the name of the Crown, ^{Idem} may enter into any contract or agreement that he considers advisable for the purpose of carrying out the provisions of this Act.

(3) The employees of the Ministry under the direction ^{Idem} of the Minister or the Deputy Minister may enter into contracts or agreements for and in the name of the Crown to carry out the responsibilities of the Ministry under this Act. 1978, c. 37, s. 8.

9. Every person providing volunteer services to the ^{Volunteers} Ministry shall serve under the direction of an employee of the Ministry. 1978, c. 37, s. 9.

Confiden-
tiality

10. Every person employed in the administration of this Act, including any person making an inspection, investigation or inquiry under this Act, shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inspection, investigation or inquiry and shall not communicate any such matters to any other person except,

R.S.C. 1970,
cc. P-2, P-6,
P-21; C-34

(a) as may be required in connection with the administration of this Act, the *Parole Act* (Canada), the *Penitentiary Act* (Canada), the *Prisons and Reformatories Act* (Canada) or the *Criminal Code* (Canada) or the regulations thereunder;

(b) to the Ombudsman of Ontario or Correctional Investigator of Canada;

(c) in statistical form if the person's name or identity is not revealed therein;

(d) with the approval of the Minister. 1978, c. 37, s. 10.

Employee
as
constable

11. The Minister may designate, in writing, any employee of the Ministry as a constable for such purposes as the Minister may set forth in the designation. 1978, c. 37, s. 11.

Protection
from
personal
liability

12.—(1) No action or other proceeding for damages shall be instituted against the Deputy Minister or any officer or employee of the Ministry or anyone acting under his authority for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty or for any act of an inmate, parolee or probationer while under his custody and supervision.

Idem

R.S.O. 1980,
c. 393

(2) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (1) had not been enacted. 1978, c. 37, s. 12.

Com-
passionate
allowance

13. The Lieutenant Governor in Council may pay a compassionate allowance in such manner and amounts as is prescribed in the regulations as compensation to an inmate for permanent disability arising from an injury suffered while engaged in an authorized activity at a correctional in-

stitution or to any other person for injury or damage inflicted upon that person by an inmate while under the custody and supervision of the Ministry. 1978, c. 37, s. 13.

PART II

CORRECTIONAL INSTITUTIONS

14.—(1) The correctional institutions existing before the day this Act comes into force continue to exist as correctional institutions. Correc-
tional
institu-
tions

(2) The Lieutenant Governor in Council may, by order, establish or discontinue a correctional institution. Idem

(3) The Lieutenant Governor in Council may, by order, designate any place as a correctional institution for the temporary custody of inmates for such period as is stated in the order and may, by order, exempt the place so designated from the application of any provision or provisions of this Act. 1978, c. 37, s. 14. Designated
correc-
tional insti-
tutions

15. The Minister may designate any facility as a community resource centre for the rehabilitation and supervision of inmates, parolees or probationers in a community setting away from a correctional institution and the Minister may withdraw a designation from such a facility. 1978, c. 37, s. 15. Community
resource
centre

16.—(1) The court before which a person is convicted under an Act of the Legislature of an offence punishable by imprisonment may sentence the person to imprisonment in a correctional institution. Sentence to
correc-
tional insti-
tution

(2) A person who has been sentenced to imprisonment in a correctional institution may be detained in any other correctional institution or in the custody of a provincial bailiff or other employee of the Ministry for the purpose of conveyance to the correctional institution to which the person was sentenced. 1978, c. 37, s. 16. Custody
during
conveyance

17. Where the Minister has reason to believe that a correctional institution is insecure or unfit for the safe custody of inmates, the Minister may, by order, direct that one or more inmates confined in the institution be conveyed to another correctional institution for such period as is stated in the order and the Minister's order is sufficient authority to convey the inmate or inmates to the correctional institution. 1978, c. 37, s. 17. Insecure
institu-
tions

Admissions
and
transfers

18. The Minister may designate in writing one or more employees of the Ministry to control and direct admissions to correctional institutions and who from time to time by warrant may transfer an inmate from one correctional institution to another. 1978, c. 37, s. 18.

Provincial
bailiffs

19.—(1) The Minister may appoint provincial bailiffs who may convey an inmate in custody at a correctional institution to another correctional institution or penitentiary in which the inmate is lawfully directed to be confined.

Warrant

(2) A provincial bailiff may convey an inmate under the authority of a warrant issued under section 18 and such a warrant is sufficient authority for the director or superintendent to deliver the inmate named therein to the bailiff.

Powers

(3) A provincial bailiff has the powers of a constable when conveying an inmate under this section. 1978, c. 37, s. 19.

Director,
superin-
tendent

20.—(1) There shall be a director or superintendent for each correctional institution to be responsible for the administration of the institution.

Duties

(2) The director or superintendent, as the case may be, shall receive into the institution every person delivered under lawful authority for detention therein and is responsible for the custody and supervision of such person until the term of imprisonment is completed or until the person is by warrant transferred or otherwise discharged in due course of law.

Deputy
director,
deputy
superin-
tendent

(3) The Deputy Minister may designate a deputy director or deputy superintendent for each correctional institution to be responsible for the administration of the institution when the director or superintendent by reason of absence, illness or other cause, is unable to carry out his duties. 1978, c. 37, s. 20.

Use of
correctional
institution
lock-up

21. The Minister may designate a correctional institution for use by a municipality as a lock-up and, where the Minister makes such a designation, the municipality shall pay to the Treasurer of Ontario annually such rate per day for persons in custody in the lock-up as is fixed by the Minister for the year. 1978, c. 37, s. 21.

Inspection,
investiga-
tion

22. The Minister may designate any person as an inspector to make such inspection or investigation as the Minister may require in connection with the administration of this Act, and the Minister may and has just cause to dismiss any employee of the Ministry who obstructs an inspection or

investigation or withholds, destroys, conceals or refuses to furnish any information or thing required by an inspector for the purposes of the inspection or investigation. 1978, c. 37, s. 22.

23. The Minister may, by order, appoint a person to make an inquiry into any matter to which this Act applies as may be specified in the Minister's order and the person so appointed shall report the result of the inquiry to the Minister and, for the purposes of the inquiry, the person making it has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act. 1978, c. 37, s. 23.

Ministerial
inquiry

R.S.O. 1980,
c. 411

24.—(1) Where a person confined in a correctional institution requires hospital treatment that cannot be supplied at the institution, the director or superintendent shall arrange for the person to receive such treatment at a public hospital and shall report the matter to such persons as the Minister may require.

Hospital
treatment

(2) Where a person confined in a correctional institution requires hospitalization in a psychiatric facility under the *Mental Health Act*, the director or superintendent shall arrange for the person to be so hospitalized and shall report the matter to such persons as the Minister may require.

Psychiatric
treatment

R.S.O. 1980,
c. 262

(3) Where a director or superintendent is unable to have a person hospitalized, he shall notify an employee of the Ministry designated by the Minister for the purpose and the employee shall then make arrangements to have the person hospitalized.

Idem

(4) The Minister may, by order, direct that an examination be made of an inmate by a psychiatrist or psychologist in a manner prescribed by the regulations for the purpose of assessing the emotional and mental condition of the inmate. 1978, c. 37, s. 24.

Mental
examina-
tion

25. The Minister may establish rehabilitation programs under which inmates may be granted the privilege of continuing to work at their regular employment, obtaining new employment, attending academic institutions, or participating in any other program that the Minister may consider advisable in order that such persons may have a better opportunity for rehabilitation. 1978, c. 37, s. 25.

Rehabilita-
tion
programs

Work
outside
institution

26.—(1) The Minister may authorize an inmate or group of inmates to participate in a work project or rehabilitation program outside the correctional institution in which the inmate or inmates are confined and the Minister may authorize the absence of the inmate or group of inmates from the correctional institution for that purpose on such terms and conditions as the Minister may specify.

Idem

(2) Every inmate who is absent from a correctional institution under subsection (1) shall comply with such terms and conditions as are specified by the Minister.

Offence

(3) Every inmate who contravenes subsection (2) without lawful excuse, the proof of which lies upon him, is guilty of an offence and on conviction is liable to imprisonment for a term of not more than one year. 1978, c. 37, s. 26.

Temporary
absence

27.—(1) Where, in the opinion of an officer of the Ministry, designated by the Lieutenant Governor in Council for the purpose, it is necessary or desirable that an inmate be temporarily absent from a correctional institution for medical or humanitarian reasons or to assist him in his rehabilitation, the officer may authorize the temporary absence of the inmate on such terms and conditions as he may specify.

Idem

(2) Every inmate temporarily absent under subsection (1) shall comply with such terms and conditions as are specified and shall return to the correctional institution at the expiration of the period for which he is authorized to be at large.

Offence

(3) Every inmate who contravenes subsection (2) without lawful excuse, the proof of which lies upon him, is guilty of an offence and on conviction is liable to imprisonment for a term of not more than one year. 1978, c. 37, s. 27.

Remission

R.S.C. 1970,
c. P-21

28.—(1) Every inmate may be credited with remission of his sentence and is subject to the forfeitures of such remission equivalent to that provided for in the *Prisons and Reformatories Act* (Canada) except that a sentence shall not be reduced, by reason of remission, to less than two days.

Restora-
tion of
forfeiture
remission

(2) Where an inmate has forfeited the whole or any part of his remission, an officer of the Ministry designated by the Lieutenant Governor in Council for the purpose may, where he is satisfied that it is in the interest of the inmate's rehabilitation, remit the whole or any part of such forfeiture.

(3) Where an inmate offers to surrender the whole or any part of his remission and where, in the opinion of the director or superintendent, it is necessary or desirable that the inmate remain confined in the correctional institution for medical or humanitarian reasons or to assist him in his rehabilitation for a period of time after the day on which the inmate is eligible to be released by reason of remission, the director or superintendent, as the case may be, may authorize the surrender of remission by the inmate.

Surrender
of
remission

(4) Where an inmate surrenders remission under subsection (3), the inmate shall remain confined in the correctional institution for such further period that corresponds to the amount of remission surrendered, under the same control and supervision and with the same privileges as if he were not eligible to be released at that time.

Super-
vision,
privileges
continued

(5) Notwithstanding subsection (3), a director or superintendent may withdraw an authorization and an inmate may withdraw a surrender of remission at any time after the day on which the inmate was eligible for release from the correctional institution, and where such withdrawal is made in writing, the inmate shall be released from the institution forthwith. 1978, c. 37, s. 28.

With-
drawal

29. Where the date of release from custody of an inmate falls upon a weekend or holiday and the director or superintendent is of the opinion that release during the weekend or holiday would inconvenience the inmate in obtaining transportation, lodging or any other service necessary for his adjustment to community life outside the correctional institution, the director or superintendent may release the inmate on the day preceding the weekend or holiday. 1978, c. 37, s. 29.

Early
release

30.—(1) No officer or employee of the Ministry shall, without the approval of the Minister, either in his own name or in the name of or in connection with or as the agent of any other person, provide, furnish or supply any materials, goods or provisions for the use of a correctional institution or community resource centre, or have an interest, directly or indirectly, in furnishing, supplying or transporting the same or in any contract relating thereto.

Employees
not to be
interested
in
contracts

(2) No officer or employee of the Ministry shall, without the approval of the Minister, buy from or sell to any inmate, parolee or probationer anything whatsoever or take or receive to his own use or for the use of any other person, any fee or gratuity from any inmate in a correctional institution or

Employees
not to trade,
etc., with
persons in
custody

from any visitor thereto or any parolee or probationer or from any other person in respect of an inmate, parolee or probationer.

Offence (3) Every person who contravenes subsection (1) or (2) is guilty of an offence and on conviction is liable to a fine of not more than \$5,000. 1978, c. 37, s. 30.

PART III

PAROLE

Board of Parole **31.** The Board of Parole is continued and shall be composed of such full-time and part-time members appointed by the Lieutenant Governor in Council as the Lieutenant Governor in Council may consider necessary. 1978, c. 37, s. 31.

Chairman **32.**—(1) The Lieutenant Governor in Council may designate one of the members of the Board to be the chairman thereof.

Quorum (2) Three members of the Board constitute a quorum. 1978, c. 37, s. 32.

Remuneration of part-time members **33.** The members of the Board who are part-time members shall serve without salary but may be paid such expenses and allowances for attendance at Board meetings and for other attendances in connection with the business of the Board as may be determined by the Lieutenant Governor in Council. 1978, c. 37, s. 33.

Granting of parole **34.** Subject to the regulations, the Board may order the release from custody on parole of any inmate convicted of an offence under any Act of the Legislature, any Act of the Parliament of Canada or against a municipal by-law upon such conditions as the Board may determine. 1978, c. 37, s. 34.

Jurisdiction **35.** The Board has exclusive jurisdiction to examine into, hear and determine all matters and questions arising under this Part and as to any matter or thing in respect of which any power, authority or discretion is conferred upon the Board, and the action or decision of the Board thereon is final and conclusive and is not open to question or review in any court and no proceedings by or before the Board shall be restrained by injunction, prohibition or other process or proceeding in any court or be removable by application for judicial review or otherwise into any court. 1978, c. 37, s. 35.

36. Where parole is granted, the term of parole shall include any portion of remission standing to the credit of the parolee when he is released. 1978, c. 37, s. 36. Remissions

37. When required by the Board, it is the duty of every person having information relevant to the suitability of an inmate to be paroled to submit such information to the Board in writing in the form prescribed by the regulations. 1978, c. 37, s. 37. Information re parolees

38. (1) Where a member of the Board, or such other person as is designated by the Board for the purpose, believes on reasonable and probable grounds that a parolee has failed to observe any of the conditions of his parole, he may authorize the arrest and return to a correctional institution of the parolee by a warrant in writing signed by him. Apprehension

(2) Where a parolee has been returned to a correctional institution under subsection (1), the Board shall review the parole as soon as possible thereafter, and shall decide either to revoke the parole or to release the parolee and allow him to continue on parole. Review

(3) Where parole is revoked under subsection (2), the parolee shall, notwithstanding that parole was granted before the coming into force of this Act, serve the portion of his term of imprisonment, including any remission, that remained unexpired at the time parole was granted, less, Calculation of term if parole revoked

- (a) the period of time spent on parole after the 20th day of June, 1978;
- (b) the period of time during which parole was suspended and the parolee was in custody; and
- (c) any remission earned after the 20th day of June, 1978 applicable to the period during which the parole was suspended and the parolee was in custody. 1978, c. 37, s. 38.

39. The Board shall in each year make a report in writing to the Lieutenant Governor in Council of the history and proceedings of the Board during the twelve-month period ending on the 31st day of March of such year. 1978, c. 37, s. 39. Annual report

40. Nothing in this Act shall be construed as affecting or impairing or as intending or purporting to affect or impair the powers of the Governor General of Canada or Interpretation

the Lieutenant Governor of Ontario to grant a reprieve, pardon or commutation of sentence in any case. 1978, c. 37, s. 40.

PART IV

ADULT PROBATION

Interpre-
tation

41. In this Part, "court" means a court of criminal jurisdiction. 1978, c. 37, s. 41.

Appoint-
ment of
probation
officers
R.S.O. 1980,
c. 418

42.—(1) Such probation officers as are considered necessary for the purposes of this Act shall be appointed under the *Public Service Act*.

Jurisdiction

(2) Every probation officer appointed in accordance with subsection (1) is a probation officer in and for the Province of Ontario and shall perform his duties in such part of Ontario as is assigned to him from time to time by the Minister.

Idem

(3) There shall be a supervisor of probation services to be responsible throughout Ontario for the supervision and administration of probation services provided by the Ministry. 1978, c. 37, s. 42.

Duties of
probation
officer

43.—(1) It is the duty of a probation officer,

(a) to procure and report to a court such information pertaining to a person found to have committed an offence as the court may require for the purpose of making a disposition of the case;

(b) to make recommendations in the report referred to in clause (a) as to the disposition of the case upon being requested by the court;

(c) to comply with any direction made to the probation officer by a court in a probation order.

Variation
of
direction

(2) Where a probation officer is of the opinion that compliance with a direction issued by a court is inconvenient or impossible, the probation officer may apply to the court for a variation of its direction, and the court, upon consideration of the reasons for the application, may vary its direction to the probation officer as it considers appropriate in the circumstances.

(3) In addition to the duties of a probation officer referred to in subsection (1), a probation officer shall perform such other duties as are assigned to him by the Minister. 1978, c. 37, s. 43.

Duties
assigned
by
Minister

44. Where a probationer is convicted of an offence constituting a breach of condition of a probation order and,

Breach of
probation
order

- (a) the time within which he may appeal or apply for leave to appeal against that conviction has expired and he has not taken an appeal or applied for leave to appeal;
- (b) he has taken an appeal or applied for leave to appeal against the conviction and the appeal or application for leave has been dismissed or abandoned; or
- (c) he has given written notice to the court that convicted him that he elects not to appeal,

or where the probationer otherwise wilfully fails or refuses to comply with the order, he is guilty of an offence and upon conviction the court may,

- (d) impose a fine of not more than \$1,000 or imprisonment for a term of not more than thirty days, or both, and in lieu of or in addition to the penalty, continue the probation order with such changes or additions and for such extended term, not exceeding an additional year, as the court considers reasonable; or
- (e) where the judge presiding is the judge who made the original order, in lieu of imposing the penalty under clause (d), revoke the probation order and impose the sentence that was suspended upon the making of the probation order. 1978, c. 37, s. 44.

PART V

GENERAL PROVISIONS

45. The *Statutory Powers Procedure Act* does not apply to proceedings for the discipline or transfer of inmates in correctional institutions, for the grievances of inmates, or for the authorization of temporary absences for inmates or to proceedings of the Board notwithstanding anything in that Act. 1978, c. 37, s. 45.

Application of
R. S. O. 1980,
c. 484

Member of
Legislative
Assembly

46. Every member of the Legislative Assembly of Ontario is entitled to enter and inspect any correctional institution, community resource centre or other facility established or designated under this Act for any purpose related to the member's duties and responsibilities as a member of the Legislative Assembly unless the Minister determines that the institution, community resource centre or facility is insecure or an emergency condition exists therein. 1978, c. 37, s. 46.

Regula-
tions

47. The Lieutenant Governor in Council may make regulations,

R.S.C. 1970.
c. P-21

- (a) respecting the operation, management, inspection and classification of correctional institutions;
- (b) respecting the operation, management and inspection of community resource centres;
- (c) designating correctional institutions as reformatories for the purpose of the *Prisons and Reformatories Act* (Canada);
- (d) respecting the treatment, training, employment, discipline, control, grievances and privileges of inmates;
- (e) requiring the maintenance of records and providing for their destruction;
- (f) respecting the retention and disposal of inmate property;
- (g) providing for the granting of compassionate allowances;
- (h) providing for and establishing criteria for the granting of temporary absences or parole;
- (i) establishing rules of procedure for the Board;
- (j) providing for the appointment and remuneration of Board members;
- (k) respecting the duties and powers of directors, superintendents, probation officers, parole officers, correctional officers, volunteers and any other employee of the Ministry;
- (l) providing for the assessment of inmates;

- (m) providing for and prescribing fees and charges to recover costs incurred by the Ministry;
- (n) prescribing forms and providing for their use. 1978, c. 37, s. 47.

CHAPTER 276

Ministry of Culture and Recreation Act

1. In this Act,

Interpre-
tation

(a) "Deputy Minister" means the Deputy Minister of Culture and Recreation;

(b) "Minister" means the Minister of Culture and Recreation;

(c) "Ministry" means the Ministry of Culture and Recreation. 1974, c. 120, s. 1.

2. The ministry of the public service known as the Ministry of Culture and Recreation is continued. 1974, c. 120, s. 2.

Ministry
continued

3. The Minister shall preside over and have charge of the Ministry. 1974, c. 120, s. 3.

Minister
to have
charge

4. The Minister is responsible for the administration of this Act and any Acts that are assigned to him by the Legislature or by the Lieutenant Governor in Council. 1974, c. 120, s. 4.

Duties of
Minister of
Culture and
Recreation

5.—(1) The Lieutenant Governor in Council shall appoint a Deputy Minister of Culture and Recreation who shall be the deputy head of the Ministry.

Deputy
Minister of
Culture and
Recreation(2) Such officers and employees as are required from time to time for the proper conduct of the business of the Ministry may be appointed under the *Public Service Act*.

Staff

R.S.O. 1980,
c. 418

(3) No action or other proceeding for damages shall be instituted against the Deputy Minister or any officer or employee of the Ministry or anyone acting under his authority for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty.

Protection
from
personal
liability(4) Subsection (3) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned inLiability
of Crown
R.S.O. 1980,
c. 393

subsection (3) to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection (3) had not been enacted. 1974, c. 120, s. 5.

**Function of
Ministry**

6.—(1) It is the function of the Ministry to advance and encourage responsible citizenship through the process of cultural and recreational development, including,

- (a) preserving and maintaining the cultural heritage of residents of Ontario with full recognition of their diverse traditions and backgrounds;
- (b) promoting access to the benefits of citizenship and of active involvement in the cultural and recreational life of the Province; and
- (c) stimulating the development of new forms of cultural expression and promoting the concept of individual and community excellence.

Idem

(2) In addition to the functions of the Ministry mentioned in subsection (1), the Minister shall perform such functions and duties as are assigned to him from time to time by the Lieutenant Governor in Council. 1974, c. 120, s. 6.

Seal

7.—(1) The Lieutenant Governor in Council may authorize a seal for the Ministry.

Idem

(2) The seal may be reproduced by engraving, lithographing, printing or other method of mechanical reproduction and when so reproduced has the same effect as if manually affixed. 1974, c. 120, s. 7.

**Delegation
of powers
and duties**

8. Where, under this or any other Act, a power or duty is granted to or vested in the Minister, he may in writing, subject to the approval of the Lieutenant Governor in Council, delegate that power or duty to the Deputy Minister, or to any officer or officers of the Ministry, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in his delegation. 1974, c. 120, s. 8.

**Citizenship
functions
of Minister**

9. The Minister shall, on his own initiative and through co-operation with the ministers having charge of the ministries of the public service of Ontario, with the ministers having charge of the departments of the public service of Canada, with municipal councils, with school boards and boards of education, with other organizations and otherwise, in the cause of human betterment, advance and encourage the concept and ideal of full and equal citizenship among the residents of Ontario in order that all may exercise effectively

the rights, powers and privileges and fulfil the obligations, duties and liabilities of citizens of Canada within the Province of Ontario. 1975, c. 18, s. 1, *part*.

10. The Lieutenant Governor in Council may make regula-
tions,

Regulations,
community
programs,
etc.

- (a) providing for programs with respect to adult education, culture, recreation, camping and physical education;
- (b) governing the granting of municipal recreation directors' interim and permanent certificates and arena managers' certificates;
- (c) authorizing,
 - (i) the council of a municipality or the council of the band to appoint a recreation committee with the approval of the Minister, or the councils of two or more municipalities or the councils of two or more bands or the council of one or more municipalities and bands to appoint a joint recreation committee with the approval of the Minister,
 - (ii) recreation committees or joint recreation committees to appoint directors, assistants and secretaries,
 - (iii) joint recreation committees or recreation committees in municipalities or on reserves to appoint area recreation committees and area recreation directors,
 - (iv) two or more municipalities or bands to enter into agreements,
 - (v) where territory without municipal organization is within the jurisdiction of one board, the board to appoint, with the approval of the Minister, one or more recreation committees for such territory without municipal organization, and
 - (vi) where territory without municipal organization is within the jurisdiction of two boards, such boards or a board and the council of

one or more bands to appoint, with the approval of the Minister, a joint recreation committee for such territory without municipal organization as may be agreed upon by the two boards or a board and the council of one or more bands, as the case may be,

for the purposes of programs of recreation, and adult education and, for the purposes of this clause, "band", "council of the band", and "reserve" have the same meaning as in the *Indian Act* (Canada) and "board" means a board as defined in the *Education Act*;

R.S.C. 1970,
c. 1-6
R.S.O. 1980,
c. 129

- (d) prescribing the composition of recreation committees, joint recreation committees and area recreation committees, and fixing the number or maximum number of members thereof, for the purpose of programs of recreation;
- (e) prescribing definitions of joint recreation program, joint recreation committee, municipal recreation program, municipal recreation services, municipal recreation director, assistant municipal recreation director, recreation program, and recreation committee;
- (f) prescribing a definition of "approved maintenance and operating costs" for the purpose of legislative grants for programs of recreation, and requiring that "approved maintenance and operating costs" be subject to the approval of the Minister;
- (g) providing for the apportionment and distribution of moneys appropriated or raised by the Legislature for,
 - (i) programs of adult education, culture, recreation, camping and physical education, and
 - (ii) leadership training camps;
- (h) prescribing the conditions governing the payment of grants for programs of adult education, culture, recreation, camping or physical education under the authority of the Minister, and providing for the approval of the Minister in any condition;
- (i) authorizing the Minister to determine the number of assistants and area community programs in

respect of which grants may be paid for programs of recreation;

- (j) authorizing the payment, with the approval of the Minister, of special grants for programs of recreation, and fixing the amounts thereof.

11.—(1) The Minister may establish, maintain and conduct camps for leadership training. Leadership training camps

(2) The cost of the establishment, maintenance and conduct of leadership training camps shall be payable out of the moneys appropriated therefor by the Legislature. 1975, c. 18, s. 1, *part.* Expenses

12. The Lieutenant Governor in Council or the Minister may, out of moneys appropriated therefor by the Legislature, direct payment from time to time of grants and contributions for consultation, research and evaluation services with respect to programs involving culture and recreation including community development services and for the provision, encouragement and development of community development programs and programs involving culture and recreation. 1975, c. 18, s. 1, *part.* Grants re programs of culture and recreation

13. The Minister may enter into agreements with organizations, municipalities or other persons or corporations respecting the provision of programs involving culture and recreation including community development programs and facilities and personnel relating thereto upon such terms and conditions as may be agreed; and he may direct, out of moneys appropriated by the Legislature, the payment of such expenditures as are necessary for such purposes. 1975, c. 18, s. 1, *part.* Agreements for the provision of programs

14.—(1) The Minister may determine the amount of any capital expenditure of the Art Gallery of Ontario or The Royal Ontario Museum that may be financed through The Ontario Universities Capital Aid Corporation, and debentures may be purchased from the Art Gallery of Ontario or The Royal Ontario Museum by the Corporation only on the recommendation of the Minister. 1974, c. 79, s. 1; 1975, c. 18, s. 2 (1). Capital expenditures financed through The Ontario Universities Capital Aid Corporation

(2) The Minister may determine the amount of any capital expenditure of a municipality, including a district, metropolitan or regional municipality, for public library purposes that may be financed through The Ontario Universities Capital Aid Corporation, and debentures issued for public library purposes may be Public libraries

purchased from such a municipality by the Corporation only on the recommendation of the Minister. 1973, c. 86, s. 1; 1975, c. 18, s. 2 (2).

Agreements

15. The Minister, with the approval of the Lieutenant Governor in Council, may, on behalf of the Government of Ontario, make agreements with the Crown in right of Canada respecting,

- (a) any matter for the administration of which the Minister is responsible; and
- (b) the payment by Canada to Ontario of any portion of any expenditures made before or after this Act comes into force by Ontario or by any municipality under any Act of Ontario. 1975, c. 18, s. 1, *part*.

**Interpre-
tation**

16.—(1) In this section, “Indian” means a person who is registered as an Indian or entitled to be registered as an Indian under the *Indian Act* (Canada).

R.S.C. 1970,
c. I-6

**Advisory
committee**

(2) The Lieutenant Governor in Council may appoint an advisory committee composed of such number of persons as are considered appropriate to advise the Minister on all matters under this Act and to make recommendations to him from time to time respecting any other matter that may encourage Indians in the development of their independence and promote their integration with the rest of the community. 1975, c. 18, s. 1, *part*.

**Advisory
committees**

17. Subject to the approval of the Lieutenant Governor in Council, the Minister may establish advisory committees to the Minister and sub-committees thereto, appoint chairmen and members of such committees and sub-committees, fix the terms of reference of such committees and sub-committees and fix the remuneration and expenses of the chairmen and members of such committees and sub-committees. 1974, c. 120, s. 9.

**Annual
report**

18. The Minister after the close of each year shall submit to the Lieutenant Governor in Council an annual report upon the affairs of the Ministry and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. 1974, c. 120, s. 10.

**Moneys
required by
Ministry**

19. The expenditures of the Ministry shall be paid out of the moneys appropriated therefor by the Legislature. 1974, c. 120, s. 11, *revised*.

CHAPTER 277

Ministry of Energy Act

1. In this Act,

Interpre-
tation

(a) "Deputy Minister" means the Deputy Minister of Energy;

(b) "Minister" means the Minister of Energy;

(c) "Ministry" means the Ministry of Energy. 1973, c. 56, s. 1.

2. The ministry of the public service known as the Ministry of Energy is continued. 1973, c. 56, s. 2, *revised*. Ministry continued

3. The Minister shall preside over and have charge of the Ministry. 1973, c. 56, s. 3. Minister to have charge

4. The Minister is responsible for the administration of this Act, any Acts that are assigned to him by the Legislature or by the Lieutenant Governor in Council and the *Ontario Energy Board Act* and the *Power Corporation Act*. 1973, c. 56, s. 4; 1973, c. 57, s. 19. Duties of Minister of Energy
R.S.O. 1980, cc. 332, 384

5.—(1) The Lieutenant Governor in Council shall appoint a Deputy Minister of Energy who shall be the deputy head of the Ministry. Deputy Minister of Energy

(2) Such officers and employees as are required from time to time for the proper conduct of the business of the Ministry may be appointed under the *Public Service Act*. Staff
R.S.O. 1980, c. 418

(3) No action or other proceeding for damages shall be instituted against the Deputy Minister or any officer or employee of the Ministry or anyone acting under his authority for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty. Protection from personal liability

(4) Subsection (3) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (3) to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection (3) had not been enacted. 1973, c. 56, s. 5. Liability of Crown
R.S.O. 1980, c. 393

Moneys
required by
Ministry

6. The expenditures of the Ministry shall be paid out of the moneys appropriated therefor by the Legislature. 1973, c. 56, s. 6, *revised*.

Seal

7.—(1) The Lieutenant Governor in Council may authorize a seal for the Ministry.

Idem

(2) The seal may be reproduced by engraving, lithographing, printing or other method of mechanical reproduction and when so reproduced has the same effect as if manually affixed. 1973, c. 56, s. 7.

Objectives of
Minister

8. The Minister or the Deputy Minister, subject to the direction and control of the Minister, shall,

- (a) review energy matters on a continuing basis with regard to both short-term and long-term goals in relation to the energy needs of the Province of Ontario;
- (b) advise and assist the Government of Ontario in its dealings with other governments regarding energy matters;
- (c) make recommendations for the effective co-ordination of all energy matters within the Government of Ontario with a view to ensuring the consistent application of policy in every area of concern regarding energy and, notwithstanding the generality of the foregoing, with respect to adequacy of supplies, prices, franchises and the development of energy resources indigenous to Ontario; and
- (d) make recommendations regarding priorities for and the development of research in all aspects of energy of significance to Ontario, including the conservation of energy and the improvement of efficiency in its production and utilization and the development of new energy sources. 1973, c. 56, s. 8.

Delegation
of powers
and duties

9. Where, under this or any other Act, a power or duty is granted to or vested in the Minister, he may in writing, subject to the approval of the Lieutenant Governor in Council, delegate that power or duty to the Deputy Minister, or to any officer or officers of the Ministry, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in his delegation. 1973, c. 56, s. 9.

Advisory
committees

10. Subject to the approval of the Lieutenant Governor in Council, the Minister may establish advisory committees to

the Minister and sub-committees thereto, appoint chairmen and members of such committees and sub-committees, fix the terms of reference of such committees and sub-committees and fix the remuneration and expenses of the chairmen and members of such committees and sub-committees. 1973, c. 56, s. 10.

11. The Minister after the close of each year shall submit^{Annual report} to the Lieutenant Governor in Council an annual report upon the affairs of the Ministry and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. 1973, c. 56, s. 11.

CHAPTER 278

Ministry of the Environment Act

1. In this Act,Interpre-
tation

(a) “Minister” means the Minister of the Environment;

(b) “Ministry” means the Ministry of the Environment.
1972, c. 1, s. 67 (2).

2.—(1) The ministry of the public service known as the Ministry of the Environment is continued. 1972, c. 1, s. 67 (3);
1972, c. 1, ss. 1, 2.

(2) The Minister shall preside over and have charge of the Ministry. R.S.O. 1970, c. 112, s. 2 (2); 1972, c. 1, s. 1.

3.—(1) A deputy minister of the Ministry may be appointed by the Lieutenant Governor in Council.

(2) Such officers, clerks and servants as are considered necessary from time to time for the proper conduct of the business of the Ministry shall be appointed under the *Public Service Act*. R.S.O. 1970, c. 112, s. 3; 1972, c. 1, s. 1.

4. Notwithstanding any other Act, the Lieutenant Governor in Council may assign the administration of any Act to the Minister, and the Minister is responsible for the administration of any Act so assigned and may exercise the powers and shall perform the duties of the minister named in any Act so assigned. R.S.O. 1970, c. 112, s. 4.

5. In addition to the responsibilities that are assigned to the Minister under section 4, the Minister shall perform such functions and duties as are assigned to him from time to time by the Lieutenant Governor in Council. R.S.O. 1970, c. 112, s. 5.

6. The expenses of the Ministry in carrying out its objects shall be paid out of the moneys appropriated therefor by the Legislature. R.S.O. 1970, c. 112, s. 6; 1972, c. 1, s. 1.

CHAPTER 279

Ministry of Government Services Act

1. In this Act,

Interpre-
tation

- (a) “commodity” means tangible personal property of every kind;
- (b) “Deputy Minister” means the Deputy Minister of Government Services;
- (c) “Government” means the Government of Ontario and any ministry or agency thereof and the Crown in right of Ontario and any agency thereof;
- (d) “Government related agency” includes Ontario Hydro, the Ontario Transportation Development Corporation, the Ontario Food Terminal Board, any public institution that is assisted by money appropriated by the Legislature and a corporation with or without share capital, the controlling interest of which is owned by the Crown in right of Ontario or whose bonds or debentures are guaranteed by the Crown in right of Ontario;
- (e) “Minister” means the Minister of Government Services;
- (f) “Ministry” means the Ministry of Government Services;
- (g) “public work” means any real property or interest therein belonging to the Government that was acquired by lease or otherwise including any building or structure made, built, constructed, erected, extended, enlarged, repaired, improved or formed for the public purposes of the Government or at the expense of the Government and including all appointments, furnishings and equipment installed or placed in or on or used in connection with such property that belong to the Government but does not include any work for which money is appropriated by the Legislature as a subsidy. 1973, c. 2, s. 1; 1974, c. 36, s. 1.

Ministry continued 2.—(1) The ministry of the public service known as the Ministry of Government Services is continued.

Minister to preside (2) The Minister shall preside over and have charge of the Ministry.

Deputy Minister (3) The Lieutenant Governor in Council shall appoint a Deputy Minister of Government Services who shall be the deputy head of the Ministry. 1973, c. 2, s. 3.

Staff 3.—(1) Such officers, clerks and servants may be appointed
R.S.O. 1980, c. 418 under the *Public Service Act* as are required from time to time for the proper conduct of the business of the Ministry.

Queen's Printer (2) The Lieutenant Governor in Council may appoint a Queen's Printer for Ontario who shall control imprint and secure legal copyright on and control title to all legislative and other material printed by the Government.

Functions of Ministry 4. The Ministry shall be operated as a service agency for the Government and its activities shall be directed towards providing the Government with services in support of Government programs. 1974, c. 36, s. 2.

Responsibility of Minister 5.—(1) It is the responsibility of the Minister and he has power, in accordance with section 7, to acquire, lease and dispose of public works.

Responsibility of Ministry (2) It is the responsibility of the Ministry, and the officers, clerks and servants of the Ministry have power, under the direction of the Minister and the Deputy Minister,

(a) to design, construct, renovate, service, maintain, repair, furnish, equip, manage and administer premises, buildings and structures that are public works;

(b) to determine the public works or parts thereof that are open to the public and to manage and administer such public works or parts including,

(i) regulating vehicular and pedestrian traffic,

(ii) setting apart any building, premises or structure that is a public work, or any part thereof, for a limited use, and

(iii) collecting fees fixed by the Minister for parking in any area set aside for parking in, on or under any public work, and the Minister may fix such fees;

- (c) to develop and manage common services for increasing the effectiveness, efficiency and economy of ministries and agencies of the Government;
- (d) to establish specifications and standards concerning the acquisition of commodities, furnishings and equipment by the Government, the cataloguing of commodities, furnishings and equipment and the maintenance, storage and disposal of commodities, furnishings and equipment;
- (e) to acquire by purchase, lease or otherwise, commodities, furnishings, equipment and services required by the Government, to store all or any of such commodities, furnishings and equipment and to dispose of all or any of such commodities, furnishings and equipment; and
- (f) to provide such other services as the Lieutenant Governor in Council assigns. 1978, c. 15, s. 1.

(3) Notwithstanding subsections (1) and (2), the Lieutenant Governor in Council may, for such period and under such terms and conditions as he considers suitable, assign any of the responsibilities or powers of the Minister under this section to another minister. 1973, c. 2, s. 6 (3).

Assignment of responsibilities to another Minister

6. Subject to the *Management Board of Cabinet Act*, the Minister may charge for commodities and services provided under this Act. 1973, c. 2, s. 7.

Charge for services, etc.
R.S.O. 1980, c. 254

7.—(1) The Minister may acquire by purchase, lease or otherwise, and hold property, real or personal, including any interest therein, for the use or purposes of Government and he may dispose of all or any part of such property or any interest therein by sale, lease or otherwise, when no longer required for the use or purposes of Government.

Acquisition of property, for use of Government

(2) The Minister, if requested by a Government related agency, may acquire by purchase, lease or otherwise, and hold property, real or personal, including any interest therein, for the use or purposes of the Government related agency, and, if requested by such agency, he may dispose of all or any part of such property or any interest therein by sale, lease or otherwise, when no longer required for the use or purposes of the Government related agency. 1974, c. 36, s. 4 (1).

for use of Government related agency

Expropriation (3) Subject to the *Expropriations Act*, the Minister, for and
R.S.O. 1980, in the name of the Crown, may, without consent of the owner
c. 148 thereof, enter upon, take and expropriate any land or interest
therein that he considers necessary for the use or purposes of
the Government. 1973, c. 2, s. 8 (2).

Expropriation by Minister on behalf of Government or Government related agency (4) Subject to the *Expropriations Act* and this Act, but notwithstanding that the Government or any Government related agency has, under any other special or general Act, authority, without the consent of the owner, to enter upon, take and expropriate land or any interest therein, the Minister, upon the request of the Government or Government related agency or as he may be directed by the Lieutenant Governor in Council, may, for and in the name of the Crown and without the consent of the owner thereof, enter upon, take and expropriate land or any interest therein on behalf of the Government or Government related agency under this Act. 1974, c. 36, s. 4 (2).

Disposal of real property (5) Any disposal by the Minister of real property, or any interest therein, by way of grant, sale, lease or otherwise, is subject to the approval of the Lieutenant Governor in Council. 1973, c. 2, s. 8 (3).

Application of subs. (5) to leases and easements (6) Subsection (5) does not apply to a grant of a lease for a term of less than twenty-one years or to a grant of an easement. 1974, c. 36, s. 4 (3).

Property vested in Crown 8.—(1) Except as otherwise provided in any other Act or by the Lieutenant Governor in Council, all public works and all property, real or personal, or any interest therein, belonging to the Government shall vest in the Crown.

Property under control of Minister (2) Except as otherwise provided in any other Act or by the Lieutenant Governor in Council, all real property, or any interest therein, belonging to the Government shall be under the control of the Minister. 1974, c. 36, s. 5, *pari.*

Instruments creating rights analogous to easements 9.—(1) A right or interest in, over, above, upon, across, along, through, under or affecting any land or any covenant or condition relating thereto in favour of the Crown, in respect of any public work, is valid and enforceable in accordance with the terms of the instrument granting, creating or containing them, notwithstanding that the right or interest or the benefit of the covenant or condition is not appurtenant or annexed to or for the benefit of any land of the Crown.

(2) On and after the registration of an instrument to which subsection (1) applies in the proper land registry office, all the rights, interests, covenants and conditions granted or created by or contained in the instrument are binding upon and enure to the benefit of the heirs, successors, personal representatives and assigns of the parties to the instrument.

Terms of instrument binding on successors

(3) A party to an instrument to which subsection (1) applies or a person to whom subsection (2) applies is not liable for breach of a covenant or condition contained in the instrument committed after he ceased to be the owner of the land therein mentioned, or after he ceased to hold the interest in the land by virtue of which he or his predecessor in title executed the instrument.

Liability of grantor for breach of covenant limited

(4) Where the land mentioned in an instrument to which subsection (1) applies is sold for taxes, the land shall be deemed to have been sold subject to any right or interest granted or created by and any condition or covenant contained in the instrument.

Land to remain subject to instrument when sold for taxes

(5) This section applies notwithstanding that such right, interest, covenant or condition was granted or created by or contained in an instrument executed before the 18th day of June, 1974. 1974, c. 36, s. 5, *part*.

Application

10.—(1) The Minister, for and in the name of the Crown, may enter into any contract or agreement that he considers advisable for the purpose of carrying out this Act. 1973, c. 2, s. 10.

Contracts

(2) The officers, clerks and servants of the Ministry under the direction of the Minister and the Deputy Minister may enter into contracts or agreements for and in the name of the Crown to carry out the responsibilities of the Ministry under this Act. 1978, c. 15, s. 2.

Idem

11. Contracts respecting any public works or property, real or personal, under the control of the Ministry, entered into by the Minister, or by any other person duly authorized to enter into the same, enure to the benefit of the Crown and may be enforced as if entered into with the Crown under this Act. 1973, c. 2, s. 11.

Enforcement of contracts

12. All actions and other proceedings for the enforcement of any contract for the recovery of damages for any tort or breach of contract or for the trial of any right in respect of property, real or personal, under the control of the Ministry shall be instituted in the name of the Attorney General. 1973, c. 2, s. 12.

Style of actions

Tenders

13. Before a contract is entered into for and in the name of the Crown in respect of the construction, renovation or repair of a public work, the Ministry shall invite tenders therefor except,

- (a) in cases of emergency where in the opinion of the Minister delay would be damaging; or
- (b) where the estimated cost of the work is less than \$10,000,

and the Minister shall report all cases referred to in clause (a) to the Legislature forthwith, if it is in session or, if not, at the next ensuing session. 1978, c. 15, s. 3.

Bonds

14. The Minister may require and take security by way of bond, with or without collateral security, or by way of deposit of money for the due performance of any contract entered into under this Act. 1973, c. 2, s. 14.

Annual report

15. The Minister, after the close of each year, shall submit to the Lieutenant Governor in Council an annual report upon the affairs of the Ministry and shall then lay the report before the Assembly, if it is in session or, if not, at the next ensuing session. 1973, c. 2, s. 15.

Delegation of authority

16. Where, under this or any other Act, power or authority is granted to or vested in the Minister, other than the power to expropriate, he may, in writing, subject to the approval of the Lieutenant Governor in Council, delegate that power or authority to the Deputy Minister, or to any officer or officers of the Ministry, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in the delegation. 1973, c. 2, s. 16.

Regulations

17. The Lieutenant Governor in Council may make regulations,

- (a) prescribing fees for the use of property belonging to or controlled by the Government, including plans, specifications, facilities and equipment;
- (b) for the preservation and management of any public building;
- (c) prescribing the manner in which and conditions under which Government purchases, disposals or storages or any class thereof shall be carried out. 1973, c. 2, s. 17.

CHAPTER 280

Ministry of Health Act

1. In this Act,

Interpre-
tation

(a) "Deputy Minister" means the Deputy Minister of Health;

(b) "health facility" means a health facility as defined in the *Health Insurance Act*;

R.S.O. 1980,
c. 197

(c) "Minister" means the Minister of Health;

(d) "Ministry" means the Ministry of Health;

(e) "physician" means a legally qualified medical practitioner lawfully entitled to practise medicine in the place in which such practice is carried on by him;

(f) "practitioner" means a person other than a physician who is lawfully performing health services in the place where they are rendered;

(g) "regulations" means the regulations made under this Act. 1972, c. 92, s. 1.

2. The Ministry of Health is continued. 1972, c. 92, s. 2. Ministry continued

3.—(1) The Minister shall preside over and have charge of the Ministry and all its functions. Minister

(2) The Minister is responsible for the administration of this Act and any other Acts that are assigned to him by the provisions thereof or by the Lieutenant Governor in Council. 1972, c. 92, s. 3. Administration of Acts

(3) Where, under this or any other Act, power to make an agreement is granted to or vested in the Minister, he may, in writing, delegate that power to the Deputy Minister or to any officer or officers of the Ministry subject to such limitations, conditions and requirements as the Minister may set out in the delegation. Delegation of authority

(4) Notwithstanding the *Executive Council Act*, an agreement made by a person empowered to do so under subsection (3) has the same effect as if made and signed by the Minister. 1975, c. 53, s. 1. Effect of R.S.O. 1980, c. 147

Deputy
Minister

4. The Deputy Minister shall perform such duties and functions as are assigned to him by the Lieutenant Governor in Council or the Minister. 1972, c. 92, s. 4.

Staff

R.S.O. 1980,
c. 418

5. Such officers and other employees may be appointed under the *Public Service Act* as are required from time to time for the proper conduct of the business of the Ministry. 1972, c. 92, s. 5.

Duties and
functions
of Minister

6.—(1) It is the function of the Minister and he has power to carry out the following duties:

- (a) to advise the Government in respect of the health of the people of Ontario;
- (b) to oversee and promote the health and the physical and mental well-being of the people of Ontario;
- (c) to be responsible for the development, co-ordination and maintenance of comprehensive health services and a balanced and integrated system of hospitals, extended care facilities, nursing homes, laboratories, ambulances and other health facilities in Ontario;
- (d) to enter into agreements for the provision of health services and equipment required therefor and for the payment of remuneration for such health services on a basis other than fee for service;
- (e) to institute a system for payment of amounts payable under the *Health Insurance Act* in the form of payment by the Province of all or any part of the annual expenditures of hospitals and health facilities;
- (f) to establish and operate, alone or in co-operation with one or more persons or organizations, institutes and centres for the training of hospital and health service personnel;
- (g) to govern the care, treatment and services and facilities therefor provided by hospitals and health facilities and assess the revenues required to provide such care, treatment and services;
- (h) to control charges made to all patients by hospitals and health facilities;
- (i) to authorize and provide financial support, alone or in co-operation with one or more persons or organizations, on a periodic basis or otherwise, for the establish-

R.S.O. 1980,
c. 197

ment and operation of corporations to supply centralized services and commodities to hospitals, extended care facilities, nursing homes, and health facilities and to others associated with health workers and the health field generally and enter into agreements necessary therefor, and enter into agreements with hospitals, extended care facilities, nursing homes, and other health facilities and other persons on such terms and conditions and for such periods as the Minister considers advisable to assist in financing all or any part of the cost of such centralized services and commodities or for any other purpose incidental to the foregoing;

- (j) to convene conferences and conduct seminars and educational programs respecting health matters.

(2) The Minister in exercising his powers and carrying out his ^{Idem} duties and functions under this Act,

- (a) shall inquire into and determine the hospital and health facilities, services and personnel required to meet the health needs of the people of Ontario;
- (b) shall promote and assist in the development of adequate health resources, both human and material, in Ontario;
- (c) may initiate, promote, conduct and maintain surveys, scientific and administrative research programs and planning studies into any matters relating to the health needs of Ontario and obtain statistics for purposes of the Ministry;
- (d) may collect such information and statistics respecting the state of health of members of the public, health resources, facilities and services and any other matters relating to the health needs or conditions affecting the public as are considered necessary or advisable, and publish any information so collected; and
- (e) may recommend to the Government the methods and programs by which the health needs of the people of Ontario can be met. 1972, c. 92, s. 6.

7. The Minister, with the approval of the Lieutenant Governor in Council, may on behalf of the Government of Ontario make agreements with municipalities or other ^{Agreements for provision of health facilities, etc.}

persons or corporations respecting the provision of hospitals and health facilities, and services and personnel thereof. 1972, c. 92, s. 7.

Ontario
Council of
Health

8.—(1) There shall be a senior advisory body to the Minister on health matters, known as the Ontario Council of Health, consisting of a full-time Chairman and such other persons numbering not fewer than sixteen, as are appointed by the Lieutenant Governor in Council.

Duties

(2) It is the duty of the Council to advise the Minister on health matters and needs of the people of Ontario and to perform such other duties as are referred to it by the Minister. 1972, c. 92, s. 8.

Appointment
of advisory
committees

9. The Lieutenant Governor in Council or the Minister may appoint committees to perform such advisory functions as are considered necessary or desirable in order to assist the Minister in the discharge of his duties. 1972, c. 92, s. 9.

Grants, loans
and purchases

10.—(1) The Minister may, out of moneys appropriated by the Legislature therefor,

- (a) make grants to universities and any non-profit organizations for research and training of persons for the health sciences in such amounts and upon such terms and conditions as the regulations prescribe;
- (b) provide bursaries and loans for educational and training purposes in respect of health to such persons, in such amounts and upon such terms and conditions as the regulations prescribe;
- (c) make grants for developing health resources to such persons and organizations and upon such terms and conditions as the regulations prescribe;
- (d) make grants or loans to schools approved by the Minister for the education of nurses, technicians and other related health personnel for work in hospitals, extended care facilities, nursing homes, and health facilities, and such grants or loans may be paid either directly to the school if the school is a corporation or to the board of a hospital under whose supervision the school is operated, upon such terms and conditions as the regulations prescribe;
- (e) purchase any corporation, organization, establishment or undertaking related to or useful for the

Ontario Health Insurance Plan or the delivery of hospital, ambulance or other health services and any real and personal property connected therewith;

- (f) establish, maintain and operate facilities for the diagnosis, surveillance and treatment of tuberculosis and for the diagnosis and surveillance of other respiratory diseases;
- (g) provide payment to physicians and other persons for the administration of treatment to outpatients suffering from tuberculosis. 1972, c. 92, s. 10; 1975, c. 53, s. 2.

11. No land, building or other premises or place or any part thereof acquired or used for the purposes of a regional school of nursing, institute or training centre approved by the Minister for the education of registered nurses, registered nursing assistants, medical laboratory technicians, radiological technicians, ambulance personnel or any other health care personnel for which a grant or loan has been made by the Government shall be sold, leased, mortgaged or otherwise disposed of without the approval of the Minister. 1972, c. 92, s. 11.

12. Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations,

- (a) to prescribe and govern the standards for the facilities for providing care, treatment and services in hospitals and health facilities;
- (b) providing for the transportation of patients from one hospital or health facility to another hospital or health facility;
- (c) providing for the transportation of organs, biologicals and surgical and other health care supplies and equipment;
- (d) requiring and providing for the approval by the Minister of regional and district councils for planning health and hospital services and their structure, functions and duties;
- (e) prescribing the proportions of standard ward, semi-private and private accommodation that shall be provided in individual hospitals and health facilities;

- (f) respecting the grants, loans and bursaries mentioned in section 10, prescribing classes of such grants, loans and bursaries and the methods of determining the amounts of such grants, loans and bursaries and providing for the manner and times of payment and the suspension and withholding of any payments and for the making of deductions from such grants, loans and bursaries, and the manner and times of repayment of such loans;
- (g) designating facilities or classes of facilities that are health facilities for the purposes of this Act;
- (h) governing the establishment, maintenance, operation and use of and the treatment provided in facilities for the diagnosis, surveillance and treatment of tuberculosis, and governing the establishment, maintenance, operation and use of facilities for the diagnosis and surveillance of other respiratory diseases. 1972, c. 92, s. 12; 1975, c. 53, s. 3.

Annual
report

13. The Minister after the close of each year shall submit to the Lieutenant Governor in Council an annual report upon the affairs of the Ministry and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. 1972, c. 92, s. 13.

CHAPTER 281

Ministry of Housing Act

1. In this Act,

Interpre-
tation

- (a) "Deputy Minister" means the Deputy Minister of Housing;
- (b) "Minister" means the Minister of Housing;
- (c) "Ministry" means the Ministry of Housing. 1973, c. 100, s. 1.

2. The ministry of the public service known as the Ministry of Housing is continued. 1973, c. 100, s. 2, *revised*.

Ministry
continued

3. The Minister shall preside over and have charge of the Ministry. 1973, c. 100, s. 3.

Minister to
have charge

4. The Minister is responsible for the administration of this Act and any Acts that are assigned to him by the Legislature or by the Lieutenant Governor in Council. 1973, c. 100, s. 4.

Duties of
Minister
of Housing

5.—(1) The Lieutenant Governor in Council shall appoint a Deputy Minister of Housing who shall be the deputy head of the Ministry.

Deputy
Minister
of Housing

(2) Such officers and employees as are required from time to time for the proper conduct of the business of the Ministry may be appointed under the *Public Service Act*.

Staff

R.S.O. 1980,
c. 418

(3) No action or other proceeding for damages shall be instituted against the Deputy Minister or any officer or employee of the Ministry or anyone acting under his authority for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty.

Protection
from
personal
liability

(4) Subsection (3) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (3) to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection (3) had not been enacted. 1973, c. 100, s. 5.

Liability
of Crown
R.S.O. 1980,
c. 393

Moneys
required by
Ministry

6. The expenditures of the Ministry shall be paid out of the moneys appropriated therefor by the Legislature. 1973, c. 100, s. 6, *revised*.

Objectives
of Minister

7. The Minister or the Deputy Minister, subject to the direction and control of the Minister, shall,

- (a) make appropriate recommendations to the Government of Ontario on policies and objectives on housing and related matters with regard to the short-term and long-term housing needs of the people of Ontario;
- (b) make recommendations for the effective co-ordination of all housing and related matters within the Government of Ontario, with a view to ensuring the consistent application of policy;
- (c) advise and otherwise assist the Government of Ontario in its dealings with other governments regarding housing and related matters; and
- (d) advise and otherwise assist local authorities and other persons involved in local planning and development of housing with regard to realizing the objectives of the Government of Ontario for housing and related matters. 1973, c. 100, s. 7.

Powers of
Minister to
implement
recom-
mendations

8. The Minister, with the approval of the Lieutenant Governor in Council, may take such measures as he considers appropriate to implement any recommendation made under section 7, including entering into agreement for such purpose with any municipality, including a metropolitan, regional or district municipality, or with any other person. 1974, c. 14, s. 1.

Delegation
of powers
and duties

9. Where, under this or any other Act, a power or duty is granted to or vested in the Minister, he may in writing, subject to the approval of the Lieutenant Governor in Council, delegate that power or duty to the Deputy Minister, or to any officer or officers of the Ministry, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in his delegation. 1973, c. 100, s. 8.

Advisory
committees

10. Subject to the approval of the Lieutenant Governor in Council, the Minister may establish advisory committees to the Minister and sub-committees thereto, appoint chairmen and members of such committees and sub-committees, fix the terms of reference of such committees and sub-committees and fix the remuneration and expenses of the chairmen and

members of such committees and sub-committees. 1973, c. 100, s. 9.

11. The Minister after the close of each fiscal year shall submit to the Lieutenant Governor in Council an annual report upon the affairs of the Ministry and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. 1973, c. 100, s. 10.

CHAPTER 282

Ministry of Industry and Tourism Act

1. In this Act,

Interpre-
tation

(a) "Minister" means the Minister of Industry and Tourism;

(b) "Ministry" means the Ministry of Industry and Tourism. 1972, c. 5, s. 1.

2.—(1) The ministry of the public service known as the Ministry of Industry and Tourism is continued. 1972, c. 5, s. 2 (1), *revised*.

Ministry
continued

(2) The Minister shall preside over and have charge of the Ministry and is responsible for the administration of this and such other Acts and regulations made thereunder as are assigned to him by the provisions thereof or by the Lieutenant Governor in Council. 1972, c. 5, s. 2 (2).

Duties of
Minister

3. The Minister shall,

Objectives
of Ministry

(a) cause the Ministry to stimulate employment and income opportunity through the effective development of industry, trade and tourism;

(b) promote the establishment, growth, efficiency and improvement of industry, trade and tourism in Ontario;

(c) develop and carry out such programs and activities as may be appropriate,

(i) to assist the adaptation of industry to changing conditions in domestic and export markets, and to changes in the techniques of production and delivery of services,

(ii) to identify and assist those industries that require special measures to develop an unrealized potential or to cope with exceptional problems of adjustments;

- (d) participate with other jurisdictions, with associations and organizations and with public and private enterprises with a view to formulate plans to create, assist and develop the human and material resources of Ontario;
- (e) encourage and promote improvement in the standards of accommodation, facilities and services offered to the travelling and vacationing public; and
- (f) publicize the tourist industry and the resources, attractions and advantages of Ontario. 1972, c. 5, s. 3.

Powers

4. The Minister may, in exercising his powers and carrying out his duties and functions under this Act,

- (a) consult with and organize conferences of representatives of industry, trade and tourism and labour, and also co-operate with federal, provincial and municipal authorities and other interested parties;
- (b) promote or conduct surveys and inquiries in matters of interest to industry and tourism;
- (c) encourage research for the advancement of industry and tourism;
- (d) collect and disseminate information on such aspects of the provincial economy as affect the development of industry and tourism; and
- (e) assist industry and tourism in any other manner considered to be proper. 1972, c. 5, s. 4.

**Employment
by
Minister**

5.—(1) The Minister may, for the purpose of carrying out this Act or of exercising any of his powers or carrying out any of his duties and functions, employ any person who is resident in a country or territory other than Canada or in a province or territory of Canada other than Ontario in the service of the Crown in the country, territory or province in which he is resident.

**Employee
under
subs. (1)
not Crown
employee**

(2) A person employed under subsection (1) shall be considered not to be a Crown employee for the purposes of any Act of the Legislature or any regulation made thereunder. 1979, c. 13, s. 1, *part*.

**Areas for
equalization
of industrial
opportunity**

6.—(1) The Minister, with the approval of the Lieutenant Governor in Council, may approve any area in Ontario that

is considered to require assistance to attract industrial development as an area of equalization of industrial opportunity.

(2) The Minister shall,

Duties re-
approved
areas

- (a) undertake research and make investigations respecting the areas of equalization of industrial opportunity; and
- (b) prepare and carry out such programs and projects to improve the economic development of areas of equalization of industrial opportunity as may be appropriate and that cannot suitably be undertaken by other ministries, branches or agencies of the Government of Ontario. 1972, c. 5, s. 5.

7.—(1) The Minister, for and in the name of the Crown, may enter into any contract or agreement that he considers advisable for the purpose of carrying out this Act or of exercising any of his powers or carrying out any of his duties and functions or respecting any public works or property under the control of the Ministry and any such contract or agreement enures to the benefit of the Crown and may be enforced as if entered into with the Crown.

Authority
to enter
into and
enforcement
of contracts
and
agreements

(2) Where, under this or any other Act or otherwise, a power or duty, including a power or duty to enter into a contract or agreement for and in the name of the Crown, is granted to or vested in the Minister, he may in writing delegate that power or duty to the Deputy Minister of Industry and Tourism or to any officer or officers of the Ministry, subject to such limitations, conditions and requirements as the Minister may set out in the delegation.

Delegation
of authority

(3) Notwithstanding the *Executive Council Act*, a contract or agreement made by a person empowered to do so under subsection (2) has the same effect as if made and signed by the Minister. 1979, c. 13, s. 1, *part*.

Effect of
R.S.O. 1980,
c. 147

8. The expenses of the Ministry in carrying out its objectives shall be paid out of the moneys appropriated therefor by the Legislature. 1972, c. 5, s. 6.

Expenses of
Ministry

CHAPTER 283

Ministry of Intergovernmental
Affairs Act

1. In this Act,

Interpre-
tation

(a) "Deputy Minister" means the Deputy Minister of Intergovernmental Affairs;

(b) "intergovernmental affairs" means any relationship between the Government of Ontario and the Government of Canada or a minister, agency or official thereof, the government of another province or territory of Canada or any minister, agency or official thereof, or the government of a foreign country or state or any agency thereof, or any municipality;

(c) "Minister" means the Minister of Intergovernmental Affairs;

(d) "Ministry" means the Ministry of Intergovernmental Affairs;

(e) "municipality" means the corporation of a metropolitan, regional or district municipality, a county, city, town, village, township or improvement district and includes a local board thereof, as defined in clause 1 (c) of the *Municipal Affairs Act*, and a board, commission, conservation authority or other local authority exercising any power with respect to municipal affairs or purposes, including school purposes, in an unorganized township or unsurveyed territory. 1978, c. 64, s. 1.R.S.O. 1980,
c. 303

2. The ministry of the public service known as the Ministry of Intergovernmental Affairs is continued. 1978, c. 64, s. 2, *revised*.

Ministry
continued

3. The Minister shall preside over and have charge of the Ministry and has power to act for and on behalf of the Ministry. 1978, c. 64, s. 3.

Minister
to have
charge

4.—(1) The Lieutenant Governor in Council may authorize a seal for the Minister and prescribe its use on documents.

Seal

Mechanical
reproduction
of seal

(2) The seal may be reproduced by engraving, lithographing, printing or any other method of mechanical reproduction, and when so reproduced has the same force and effect as if manually affixed. 1978, c. 64, s. 4.

Federal-
provincial,
inter-
provincial
and inter-
national
affairs

5.—(1) The Minister is responsible for making recommendations to the Executive Council on the programs and activities of the Government of Ontario and its agencies in relation to federal-provincial, inter-provincial and inter-national affairs.

Municipal
affairs

(2) The Minister is responsible for the policies of the Government of Ontario in relation to municipalities and, without limiting the generality of the foregoing is responsible for,

- (a) advising the Executive Council as to the organization, function and structure of municipal institutions;
- (b) exercising the powers conferred on the Ministry in any general or special Act in relation to the administration of municipalities; and
- (c) co-ordinating programs of financial assistance to municipalities.

Orders
establishing
procedures

(3) The Lieutenant Governor in Council may, on the recommendation of the Minister, make orders establishing procedures to achieve the objectives set out in subsections (1) and (2) and, without limiting the generality of the foregoing, such orders may provide for procedures respecting the execution, by the Government of Ontario, of agreements or classes of agreements with other governments.

Administration
of Acts

(4) The Minister is responsible for the administration of this Act, the Acts set out in the Schedule and the Acts that are assigned to him by the Legislature or by the Lieutenant Governor in Council. 1978, c. 64, s. 5.

Deputy
Minister

6.—(1) The Lieutenant Governor in Council shall appoint a Deputy Minister of Intergovernmental Affairs who shall be the deputy head of the Ministry.

Duties of
Deputy
Minister

(2) Under the direction of the Minister, the Deputy Minister shall perform such duties as the Minister may assign or delegate to him.

Delegation
of powers
and duties
of Minister

(3) Any power or duty conferred on the Minister by this or any other Act may be delegated by him in writing,

subject to such limitations, conditions and requirements as the Minister may set out in the delegation, to the Deputy Minister or to any officer of the Ministry who may act for him in his place and stead, and when the Deputy Minister or such other officer acts in the place and stead of the Minister, it shall be presumed conclusively that he acted in accordance with such delegation.

(4) Notwithstanding the *Executive Council Act*, a contract or an agreement made by a person empowered to do so under subsection (3) has the same effect as if made and signed by the Minister. 1978, c. 64, s. 6. Effect of
R.S.O. 1980,
c. 147

7.—(1) No action or other proceeding for damages shall be instituted against the Deputy Minister, or any officer or employee of the Ministry, or anyone acting under his authority for any act done in good faith in the execution or intended execution of his duty, or for any alleged neglect or default in the execution in good faith of his duty. Protection
from
personal
liability

(2) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (1) had not been enacted. 1978, c. 64, s. 7. Idem
R.S.O. 1980,
c. 393

8. The Lieutenant Governor in Council may by order amend the Schedule. 1978, c. 64, s. 9. Amendments
to Schedule

SCHEDULE

The City of Cornwall Annexation Act, 1974

The City of Hamilton Act, 1975

The City of Kanata Act, 1978

The City of Port Colborne Act, 1974

The City of Thorold Act, 1975

The City of Thunder Bay Act, 1968-69

The City of Timmins-Porcupine Act, 1972

The County of Oxford Act

The District Municipality of Muskoka Act

The Haliburton Act

The Line Fences Act

The Local Improvement Act

The Moosonee Development Area Board Act

The Municipal Act

The Municipal Affairs Act

The Municipal Arbitrations Act

The Municipal Corporations Quieting Orders Act

The Municipal Elderly Residents' Assistance Act

The Municipal Elections Act

The Municipal Franchises Act

*The Municipal and School Tax Credit Assistance Act, R.S.O. 1970,
c. 285*

The Municipal Subsidies Adjustment Repeal Act, 1976

The Municipal Tax Assistance Act

The Municipal Unemployment Relief Act

The Municipal Works Assistance Act

The Municipality of Metropolitan Toronto Act

The Municipality of Shuniah Act, 1936

The Ontario Unconditional Grants Act

The Ontario Youth Employment Act

The Ottawa-Carleton Amalgamations and Elections Act, 1973

The Provincial Parks Municipal Tax Assistance Act

The Public Parks Act

The Public Utilities Act

The Public Utilities Corporations Act

The Regional Municipality of Durham Act

The Regional Municipality of Haldimand-Norfolk Act

The Regional Municipality of Halton Act

The Regional Municipality of Hamilton-Wentworth Act

The Regional Municipality of Niagara Act

The Regional Municipality of Ottawa-Carleton Act

The Regional Municipality of Peel Act

The Regional Municipality of Sudbury Act

The Regional Municipality of Waterloo Act

The Regional Municipality of York Act

The Shoreline Property Assistance Act

The Snow Roads and Fences Act

The Statute Labour Act

The Tax Sales Confirmation Act, 1974

The Territorial Division Act

The Town of Wasaga Beach Act, 1973

The Township of North Plantagenet Act, 1976

The Village of Point Edward Act, 1972

The Wharfs and Harbours Act

1978, c. 64, Sched., revised.

CHAPTER 284

Ministry of Labour Act

1. In this Act,

Interpre-
tation

(a) "Board" means the Industry and Labour Board;

(b) "Deputy Minister" means the Deputy Minister of Labour;

(c) "inspector" means an inspector appointed under this Act or any other Act or regulation administered by the Ministry;

(d) "Minister" means the Minister of Labour;

(e) "Ministry" means the Ministry of Labour. R.S.O. 1970, c. 117, s. 1; 1972, c. 1, s. 1, *amended*.

2.—(1) The ministry of the public service known as the Ministry of Labour is continued. R.S.O. 1970, c. 117, s. 2 (1); 1972, c. 1, ss. 1, 2.

Ministry
continued

(2) The Minister shall preside over and have charge of the Ministry. R.S.O. 1970, c. 117, s. 2 (2); 1972, c. 1, s. 1.

Minister
to have
charge

3. The Lieutenant Governor in Council may appoint a Deputy Minister and such other officers, clerks and servants in the Ministry as are considered necessary or expedient. R.S.O. 1970, c. 117, s. 3; 1972, c. 1, s. 1.

Deputy
Minister
and staff

4. The Deputy Minister shall perform such duties as are assigned to him by the Lieutenant Governor in Council or by the Minister. R.S.O. 1970, c. 117, s. 4.

Duties of
Deputy
Minister

5. The Minister is responsible for the administration of this Act and the Acts that are assigned or transferred to him by the Legislature or by the Lieutenant Governor in Council. R.S.O. 1970, c. 117, s. 5.

Adminis-
tration of
Act

6. The Ministry shall,

Duties of
Ministry

(a) collect such statistical and other information respecting trades and industries in Ontario as is considered necessary or expedient from time to time;

statistics
and
information

distribution
of employ-
ment

- (b) ascertain the localities in which mechanics, artisans or workmen in any particular trade or industry are required and, wherever practicable, assist in supplying the demand for such work or labour ;

sanitary
and other
conditions

- (c) ascertain and report upon sanitary and other conditions relating to the health, comfort, and well-being of the industrial classes ;

employment
bureaus

- (d) establish and maintain in the various centres of population throughout Ontario employment offices and similar agencies for obtaining suitable employment for persons, both male and female, in any of the trades, occupations, or professions, and for procuring workers for employment in any of the trades, occupations or professions, and, subject to the *Employment Agencies Act*, to regulate all voluntary, private or municipal employment bureaus ;

R.S.O. 1980,
c. 136

wages

- (e) ascertain and report upon the rates of wages paid to employees in the various trades and industries carried on in Ontario ;

new
industries
in Ontario

- (f) inquire and report as to the establishment of new industries in Ontario in any case where, by reason of the production of raw material for such industry in Ontario or the immigration of persons skilled in the particular industry or other circumstances, it appears that such industry can profitably be carried on ;

reporting
upon laws
in other
countries

- (g) inquire into, consider and report upon the operation of laws in force in other parts of the Commonwealth and in foreign countries, having for their objects the protection, technical training and welfare of the industrial classes, and make such recommendations and suggestions thereon as are considered advisable ;

changes in
the law

- (h) consider and report upon any petition for or suggestion of a change in the law of Ontario relating to labour and wages or any matter affecting the industrial classes, presented or made by any trades and labour council or other organization representing those classes or by any other person. R.S.O. 1970, c. 117, s. 6 ; 1972, c. 1, s. 1.

Annual
report

7. The Minister shall after the close of each fiscal year submit an annual report upon the affairs of the Ministry to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. 1972, c. 1, s. 82 (2).

8.—(1) The Board shall consist of not more than three members appointed by the Lieutenant Governor in Council, one of whom shall be designated as chairman, and all of whom shall be officers of the Ministry. Industry and Labour Board

(2) The Board is a body corporate and, with the approval of the Lieutenant Governor in Council, may pass by-laws and regulations governing its proceedings. By-laws of Board

(3) The Board shall administer, enforce and carry out any Act in which the Board is designated for the purpose in such Act or that is assigned to it by the Lieutenant Governor in Council. R.S.O. 1970, c. 117, s. 8; 1972, c. 1, s. 1. Powers of Board

9.—(1) The Deputy Minister may require from employers, workmen and other persons such information concerning rates of wages, hours of work, regularity of employment, and other matters as he considers necessary for the proper carrying out of this Act or of any of the Acts or regulations administered by the Ministry. R.S.O. 1970, c. 117, s. 9 (1); 1972, c. 1, s. 1. Powers of Deputy Minister as to obtaining information

(2) For the purpose of procuring such information or for the purpose of assisting the Ministry in carrying out any of the provisions of section 6, the Minister may authorize the Board or any members of the Board to conduct a public inquiry and the Board and the member or members thereof acting under such authority have, for the purpose of conducting such public inquiry, the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such public inquiry as if it were an inquiry under that Act. 1971, c. 50, s. 29 (1); 1972, c. 1, s. 1. Public inquiries by Board

(3) Any officer or inspector of the Ministry, acting under the written authority of the Deputy Minister, has right of access at all reasonable hours to any office, factory, shop, place of business or other premises for the purpose of carrying out this Act or any Act or regulations administered by the Ministry. R.S.O. 1970, c. 117, s. 9 (3); 1972, c. 1, s. 1. Right of access

(4) Every person who refuses to furnish any return or information that may be lawfully required, or who hinders or obstructs any officer or inspector in the performance of his duties under this Act or any of the Acts or regulations administered by the Ministry is guilty of an offence and on conviction is liable to a fine of \$20. R.S.O. 1970, c. 117, s. 9 (4); 1972, c. 1, s. 1. Offence

(5) Every person who falsifies his records or returns or supplies incomplete or untrue information is guilty of an Falsifying records

offence and on conviction is liable to a fine of not less than \$50 and not more than \$300. R.S.O. 1970, c. 117, s. 9 (5).

Regulations
re ionizing
radiation

10.—(1) The Lieutenant Governor in Council may make regulations for the protection of the health and safety of persons from the effects of ionizing radiation used in industry or commerce,

- (a) classifying sources of ionizing radiation ;
- (b) respecting the processing, installation, use, movement, handling, maintenance, storage or disposal of sources of ionizing radiation or any class of them ;
- (c) requiring notice of any matter respecting the processing, installation, use, movement, handling, maintenance, storage or disposal of sources of ionizing radiation or any class of them ;
- (d) requiring drawings and specifications showing protective measures concerning sources of ionizing radiation ;
- (e) requiring physicians or other persons to furnish to a designated person information concerning the exposure of any person to ionizing radiation in excess of a prescribed maximum ;
- (f) respecting the medical examination of persons who have or may come in contact with ionizing radiation, prescribing by whom the cost of the examination is to be borne, and requiring a report of the examination to a designated person ;
- (g) requiring and regulating the supervision of the processing, use, installation, movement, handling, maintenance, storage or disposal of sources of ionizing radiation, or any class of them, by qualified persons and prescribing their qualifications ;
- (h) providing for and requiring the registration of any specified persons engaged in the processing, installation, use, movement, handling, maintenance, storage or disposal of a source of ionizing radiation, and prescribing the fees therefor ;
- (i) defining “vicinity” when used with respect to sources of ionizing radiation or any class of them, and regulating or prohibiting use of the vicinity of sources of ionizing radiation ;

- (j) designating classes of persons and respecting the employment of any person or class of persons in the processing, installation, use, movement, handling, maintenance, storage or disposal of sources of ionizing radiation, or in the vicinity of sources of ionizing radiation;
- (k) excluding any class of sources of ionizing radiation or any premises from the application of any or all of the regulations made under this section;
- (l) prescribing forms and providing for their use.

(2) Regulations made under this section shall be deemed to be in addition to and not in contradiction of or in substitution for regulations made under any other Act dealing with the safety of workmen and employees. R.S.O. 1970, c. 117, s. 11 (2, 3). Other regulations not interfered with

11.—(1) Where an inspector is of the opinion that any work on any undertaking or any part thereof to which any Act or regulation administered by the Ministry applies is being done in a manner or under conditions that are dangerous to life or property, he may, by written order to any person responsible for or in charge of the work, require the immediate cessation of the work or any part thereof that he considers dangerous. R.S.O. 1970, c. 117, s. 12 (1); 1972, c. 1, s. 1. Stop-work orders

(2) Where an inspector has made an order under subsection (1), he may permit such work as may be done safely and that is necessary to eliminate the dangerous condition. R.S.O. 1970, c. 117, s. 12 (2). Idem

(3) Any person who considers himself aggrieved by an order made by an inspector under this section may appeal to the chief inspector or chief officer having supervision over the inspector or, if there is no such chief inspector or chief officer, to the Deputy Minister who shall designate a person to hear and determine the appeal. Appeal

(4) A chief inspector or chief officer to whom an appeal is made under this section or the person designated under subsection (3) to hear an appeal shall hear and dispose of the appeal as promptly as is practicable, but the bringing of such appeal does not affect the operation of the order appealed from pending disposition of the appeal. Hearing

(5) An appeal under this section may be made in writing or orally or by telephone, but the person to whom the appeal is made may require the grounds for appeal to be specified in writing before the hearing. How appeal made

Parties

(6) The appellant, the inspector from whom the appeal is taken and such other persons as the person to whom the appeal is made may specify are parties to an appeal under this section.

Powers of
person
hearing
appeal

(7) The person hearing an appeal under this section may substitute his findings or opinions for those of the inspector who made the order appealed from and may affirm or rescind the order or make a new order in substitution therefor and has all the powers of the inspector for such purpose and the decision or order on the appeal shall stand in the place of and have a like effect under this Act and the regulations as the decision or order of the inspector. 1971, c. 50, s. 29 (2).

Offences

12. Every person who contravenes any of the provisions of this Act or the regulations or any notice of direction made thereunder is guilty of an offence and on conviction is liable to a fine of not more than \$500 or to imprisonment for a term of not more than twelve months, or to both. R.S.O. 1970, c. 117, s. 13.

CHAPTER 285

Ministry of Natural Resources Act

1. In this Act,

Interpre-
tation

- (a) "Commissioner" means the Mining and Lands Commissioner;
- (b) "deputy commissioner" means a deputy mining and lands commissioner;
- (c) "Deputy Minister" means the Deputy Minister of Natural Resources;
- (d) "Minister" means the Minister of Natural Resources;
- (e) "Ministry" means the Ministry of Natural Resources. 1973, c. 105, s. 1.

2. The Minister is responsible for the administration of this Act and any other Acts that are assigned to him by the provisions thereof or by the Lieutenant Governor in Council. 1972, c. 4, s. 2.

Duties of
Minister

3. The ministry of the public service known as the Ministry of Natural Resources is continued. 1972, c. 4, s. 3, *revised*.

Ministry
continued

4. The Minister shall preside over and have charge of the Ministry. 1972, c. 4, s. 4.

Minister to
have charge

5.—(1) There shall be,

Staff

- (a) a Deputy Minister of Natural Resources who shall be the deputy head of the Ministry;
- (b) a Surveyor General who shall be appointed by the Lieutenant Governor in Council and who shall perform such duties in connection with the surveying of lands, investigation of water powers, engineering, inspection, research and such other matters as are assigned to him by the Lieutenant Governor in Council or by the Minister.

(2) Such officers, clerks and servants as are required from time to time for the proper conduct of the business of the Ministry may be appointed under the *Public Service Act*. 1972, c. 4, s. 5 (1, 2).

Idem

R.S.O. 1980,
c. 418

Protection
from personal
liability

(3) No action or other proceeding for damages shall be instituted against the Deputy Minister, the Commissioner, a deputy commissioner, or any officer or employee of the Ministry or anyone acting under his authority for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty. 1972, c. 4, s. 5 (3); 1973, c. 105, s. 2 (1).

Liability
of Crown
R.S.O. 1980,
c. 393

(4) Subsection (3) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (3) to which it would otherwise be subject and the Crown is liable under that Act for any such tort in like manner as if subsection (3) had not been enacted. 1972, c. 4, s. 5 (4); 1973, c. 105, s. 2 (2).

Appoint-
ments

6.—(1) The Lieutenant Governor in Council may appoint an officer to be known as the Mining and Lands Commissioner and one or more officers to be known as deputy mining and lands commissioners.

Absence of
Commis-
sioner

(2) In the absence of the Commissioner,

(a) where a deputy commissioner is appointed, he shall perform the duties and exercise the powers of the Commissioner; and

(b) where no deputy commissioner is appointed, the Minister may appoint in writing a person to exercise the powers of the Commissioner to make orders under section 86 of the *Mining Act*.

R.S.O. 1980,
c. 268

Vacancies

(3) In the case of a vacancy in the office of the Commissioner, the deputy commissioner who in point of time is senior in appointment to office shall act as the Commissioner until the vacancy is filled.

Powers, etc.,
of tribunal

(4) Where two or more deputy commissioners are appointed, the Commissioner and two of the deputy commissioners may hear any matter, application or appeal to the Commissioner as a tribunal of three and a hearing by the tribunal shall be deemed to be a hearing before the Commissioner and the decision of the majority shall be the decision of the tribunal.

Seal

(5) The Commissioner shall have a seal of office but no document executed by the Commissioner is invalid by reason of the failure to affix the seal thereto.

Regulations

(6) The Lieutenant Governor in Council may make regulations,

(a) establishing the rules of practice and procedure before the Commissioner or any tribunal provided for in subsection (4);

(b) assigning to the Commissioner authorities, powers and duties of the Minister.

(7) Part VIII of the *Mining Act* applies with necessary modifications to the exercise of authorities, powers and duties assigned to the Commissioner under clause (6) (b). 1973, c. 105, s. 3.

Application
of Part VIII
R.S.O. 1980,
c. 268

7.—(1) The Minister may authorize the Deputy Minister or any other officer or employee in the Ministry to exercise any power or perform any duty that is granted to or vested in the Minister under this or any other Act.

Delegation
of powers
and duties

(2) The Minister may limit an authorization made under subsection (1) in such manner as he considers advisable.

Limitations

(3) Section 6 of the *Executive Council Act* does not apply to a deed or contract that is executed under an authorization made under subsection (1). 1978, c. 92, s. 1, *part*.

Application of
R.S.O. 1980,
c. 147, s. 6

8. The Minister may enter into a contract in respect of any matter that is under his administration under this or any other Act. 1978, c. 92, s. 1, *part*.

Contracts

9.—(1) The Minister may authorize the use of a facsimile of his signature and the Deputy Minister may authorize the use of a facsimile of his signature on any document except an affidavit or a statutory declaration.

Facsimile
signatures

(2) A facsimile of the signature of the Minister or the Deputy Minister affixed to a document under an authorization made under subsection (1) shall be deemed to be the signature of the Minister or the Deputy Minister, as the case requires. 1978, c. 92, s. 1, *part*.

Idem

10.—(1) The Lieutenant Governor in Council may authorize a seal for the Ministry.

Seal

(2) The seal may be reproduced by engraving, lithographing, printing or other method of mechanical reproduction and when so reproduced has the same effect as if manually affixed. 1972, c. 4, s. 7.

Idem

11. Affidavits or statutory declarations required under any Act administered by the Minister or intended to be used in reference to any claim, business or transaction in the Ministry or in respect of which the Ministry is

Officers
authorized
to take
affidavits

interested or which affects the revenue of Ontario, under the control of the Ministry, may be taken before any person having authority to administer oaths or before the clerk of any county or district court, or before the Minister or Deputy Minister, or before any person appointed for that purpose by the Minister or Deputy Minister, or before an Ontario land surveyor appointed by the Minister or Deputy Minister to inquire into, take evidence in or report upon any matter pending in the Ministry. 1972, c. 4, s. 8.

Certified
copy of
instrument
to be
evidence

12. A copy of an instrument made or issued under the hand of the Minister or Deputy Minister or of any officer of the Ministry under the authority of any Act administered by the Minister or under the authority of the regulations made under those Acts, purporting to be certified by the Minister, Deputy Minister or officer as a true copy of such instrument is receivable in evidence in any action, prosecution or other proceeding as *prima facie* proof of the instrument and its contents without proof of the signature or official position of the person purporting to have made the certificate. 1972, c. 4, s. 9.

Advisory
committees

13. Subject to the approval of the Lieutenant Governor in Council, the Minister may establish advisory committees to the Minister and sub-committees thereto, appoint chairmen and members of such committees and sub-committees, fix the terms of reference of such committees and sub-committees and fix the remuneration and expenses of the chairmen and members of such committees and sub-committees. 1972, c. 4, s. 10.

Annual
report

14. The Minister after the close of each year shall submit to the Lieutenant Governor in Council an annual report upon the affairs of the Ministry and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. 1972, c. 4, s. 11.

CHAPTER 286

Ministry of Northern Affairs Act

1. In this Act,

Interpre-
tation

- (a) "Deputy Minister" means the Deputy Minister of Northern Affairs;
- (b) "Minister" means the Minister of Northern Affairs;
- (c) "Ministry" means the Ministry of Northern Affairs. 1977, c. 21, s. 1.

2. The ministry of the public service known as the Ministry of Northern Affairs is continued. 1977, c. 21, s. 2, *revised*.

Ministry
continued

3. The Minister shall preside over and have charge of the Ministry. 1977, c. 21, s. 3.

Minister to
have charge

4. The Minister is responsible for the administration of this Act and any Acts that are assigned to him by the Legislature or by the Lieutenant Governor in Council. 1977, c. 21, s. 4.

Duties of
Minister

5.—(1) The Lieutenant Governor in Council shall appoint a Deputy Minister of Northern Affairs who shall be deputy head of the Ministry.

Deputy
Minister

(2) Such officers and employees as are required from time to time for the proper conduct of the business of the Ministry may be appointed under the *Public Service Act*.

Staff

R.S.O. 1980,
c. 418

(3) No action or other proceeding for damages shall be instituted against the Deputy Minister or any officer or employee of the Ministry or anyone acting under his authority for any act done in good faith in the execution of his duty or for any alleged neglect or default in the execution in good faith of his duty.

Protection
from
personal
liability

(4) Subsection (3) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of

Liability
of Crown
R.S.O. 1980,
c. 393

liability in respect of a tort committed by a person mentioned in subsection (3) to which it would otherwise be subject and the Crown is liable under that Act for any such tort in a like manner as if subsection (3) had not been enacted. 1977, c. 21, s. 5.

Seal

6.—(1) The Lieutenant Governor in Council may authorize a seal for the Ministry.

Idem

(2) The seal may be reproduced by engraving, lithographing, printing or other method of mechanical reproduction and when so reproduced has the same effect as if manually affixed. 1977, c. 21, s. 6.

Delegation
of powers
and duties

7.—(1) Where, under this or any other Act, a power or duty is granted to or vested in the Minister, he may in writing delegate that power or duty to the Deputy Minister, or to any officer or officers of the Ministry, subject to such limitations, restrictions, conditions and requirements as the Minister may set out in his delegation.

Officers
authorized
to take
affidavits

(2) The Minister may empower such officers of the Ministry as he designates to administer oaths and take affidavits and declarations authorized by law in Northern Ontario or such part of Northern Ontario as the Minister prescribes in the designation, and each officer designated is a commissioner for taking affidavits under the *Commissioners for taking Affidavits Act*. 1977, c. 21, s. 7.

R.S.O. 1980,
c. 75

Function of
Ministry

8. It is the function of the Ministry to co-ordinate the activities of and initiate policies and programs for the Government in Northern Ontario, including,

- (a) preparing and recommending Government plans, policies and priorities for Northern Ontario;
- (b) establishing and administering Ministry programs and co-ordinating Government programs and services relating to Northern Ontario;
- (c) advising and participating in the planning and financing of Government programs, services and activities in Northern Ontario provided by other ministries;
- (d) improving the accessibility of the programs, services and activities of the Government of Ontario to the residents of Northern Ontario;

- (e) making recommendations regarding priorities for research of social and economic conditions of all areas of Northern Ontario;
- (f) administering such other programs and performing such other duties as are assigned to it by any Act or by the Lieutenant Governor in Council. 1977, c. 21, s. 8.

9. The Minister, with the approval of the Lieutenant Governor in Council, may make reciprocal arrangements and enter into agreement with, Agreements

- (a) the Crown in right of Canada;
- (b) the government or governments of any province or provinces of Canada; and
- (c) municipalities. 1977, c. 21, s. 9.

10.—(1) Upon the recommendation of the Minister, the Lieutenant Governor in Council may establish programs for the benefit of the residents of Northern Ontario. Establishment of programs

(2) A program may determine conditions for grants and assistance and conditions under which services are provided by the Ministry and expenses allowed. 1977, c. 21, s. 10. Conditions for grants and assistance

11. Subject to the approval of the Lieutenant Governor in Council, the Minister may establish advisory committees to the Minister and sub-committees thereto, appoint chairmen and members of such committees and sub-committees, fix the terms of reference of such committees and sub-committees and fix the remuneration and expenses of the chairmen and members of such committees and sub-committees. 1977, c. 21, s. 11. Advisory committees

CHAPTER 287

Ministry of Revenue Act

1. In this Act,

Interpre-
tation

(a) "Minister" means the Minister of Revenue;

(b) "Ministry" means the Ministry of Revenue. R.S.O.
1970, c. 119, s. 1; 1972, c. 1, s. 1.

2. The ministry of the public service known as the Ministry of Revenue, is continued. 1972, c. 1, s. 88 (2); 1972, c. 1, ss. 1, 2.

Ministry
continued

3. The Minister shall preside over and have charge of the Ministry. R.S.O. 1970, c. 119, s. 3; 1972, c. 1, s. 1.

Minister to
have charge

4. The Minister is responsible for the administration of this Act, any Acts that are assigned to him by the Legislature or by the Lieutenant Governor in Council, and the following Acts:

Minister's
Acts1. *Corporations Tax Act.*R.S.O. 1980,
c. 972. *Gasoline Tax Act.*R.S.O. 1980,
c. 1863. *Income Tax Act.*R.S.O. 1980,
c. 2134. *Land Transfer Tax Act.*R.S.O. 1980,
c. 2315. *Motor Vehicle Fuel Tax Act.*R.S.O. 1980,
c. 3006. *The Motor Vehicle Fuel Tax Act, 1965.*

1965, c. 76

7. *Race Tracks Tax Act.*R.S.O. 1980,
c. 4288. *Retail Sales Tax Act.*R.S.O. 1980,
c. 4549. *The Succession Duty Act.*R.S.O. 1970,
c. 44910. *Tobacco Tax Act.* R.S.O. 1970, c. 119, s. 4, revised.R.S.O. 1980,
c. 502

5.—(1) The Lieutenant Governor in Council shall appoint a Deputy Minister of Revenue as deputy head of the Ministry.

Deputy
Minister

Deputy
Minister's
duties

(2) Under the direction of the Minister, the Deputy Minister of Revenue shall perform such duties as the Minister may assign to him. R.S.O. 1970, c. 119, s. 5; 1972, c. 1, s. 1.

Officers
and staff
R.S.O. 1980,
c. 418

6. There shall be appointed under the *Public Service Act* such other officers, clerks and servants as the Minister considers necessary for the proper conduct of the business of the Ministry. R.S.O. 1970, c. 119, s. 6; 1972, c. 1, s. 1.

Seal

7.—(1) The Lieutenant Governor in Council may authorize a seal for the Minister.

Idem

(2) The seal may be reproduced by engraving, lithographing, printing or any other method of mechanical reproduction, and when so reproduced has the same force and effect as if manually affixed. R.S.O. 1970, c. 119, s. 7.

Interpre-
tation

8.—(1) In this section,

(a) “penalty” includes any forfeiture or pecuniary penalty imposed or authorized to be imposed by any Act of the Legislature for any contravention of the laws relating to the collection of the revenue or to the management of any public work producing toll or revenue, notwithstanding that part of such forfeiture or penalty is payable to any other person;

(b) “tax” includes any tax, impost, duty or toll payable to Her Majesty, imposed or authorized to be imposed by any Act of the Legislature.

Remission
of taxes,
etc.

(2) Notwithstanding any other Act, the Lieutenant Governor in Council, on the recommendation of the Minister, may, if he considers it in the public interest, remit any tax, fee or penalty.

Idem,
may be
partial,
etc.

(3) A remission under this section may be total or partial, conditional or unconditional, and may be granted,

(a) before, after or pending any suit or proceeding for the recovery of the tax, fee or penalty in respect of which it is granted;

(b) before or after any payment thereof has been made or enforced by process or execution; or

(c) in the case of a tax or fee, in any particular case or class of case and before the liability therefor arises.

(4) A remission under this section may be granted,

Idem,
form of

- (a) by forbearing to institute a suit or proceeding for the recovery of the tax, fee or penalty in respect of which the remission is granted ;
- (b) by delaying, staying or discontinuing any suit or proceeding already instituted ;
- (c) by forbearing to enforce, staying or abandoning any execution or process upon any judgment ;
- (d) by the entry of satisfaction upon any judgment ; or
- (e)' by repaying any sum of money paid to or recovered by the Minister for the tax, fee or penalty.

(5) Where a remission is granted under this section subject to a condition and the condition is not performed, it may be enforced or all proceedings may be had as if there had been no remission.

Idem,
conditional

(6) A conditional remission, upon performance of the condition, and an unconditional remission, have effect as if the remission was made after the tax, fee or penalty in respect of which it was granted had been sued for and recovered.

Effect of
conditional
remission

(7) Remissions granted under this or any other Act may be paid out of the Consolidated Revenue Fund.

Payments

(8) A statement of each remission of \$1,000 or more granted under this section shall be reported to the Legislature in the public accounts.

Report

(9) Where a penalty imposed by any law relating to the revenue has been wholly and unconditionally remitted under this section, the remission has the effect of a pardon for the offence for which the penalty was incurred, and thereafter the offence has no legal effect prejudicial to the person to whom the remission was granted. R.S.O. 1970, c. 119, s. 8.

Remission
has effect
of pardon

9. The Lieutenant Governor in Council may make regulations,

Regulations

- (a) authorizing or requiring the Deputy Minister of Revenue or any officer of the Ministry to exercise any power or perform any duty conferred or imposed upon the Minister by this or any Act ;

- (b) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.
R.S.O. 1970, c. 119, s. 9; 1972, c. 1, s. 1.

Interpre-
tation

10.—(1) In this section, "Treasurer of Ontario" means the Treasurer of Ontario who presided over and administered the Treasury Department before the 23rd day of July, 1968.

Assessments
not affected

(2) This Act does not impair or prejudicially affect any assessment of tax made by the Treasurer of Ontario or authorized officer of the Treasury Department pursuant to any Act mentioned in section 4 of *The Department of Revenue Act, 1968*.

1968, c. 29

Rights not
affected

(3) Nothing in this Act impairs or prejudicially affects any rights given to a person under any Act mentioned in section 4 of *The Department of Revenue Act, 1968* before the 23rd day of July, 1968.

Property
vested in
Minister

(4) Where any security, obligation, covenant or any interest in real or personal property was given to the Treasurer of Ontario by virtue of his office pursuant to any Act mentioned in section 4 of *The Department of Revenue Act, 1968*, the security, obligation, covenant, and any right of action in respect thereto, and all the interest in real or personal property vests, subject to the same trusts as they were respectively subject to, in the Minister and may be proceeded on by action or in any other manner, or may be assigned, transferred or discharged, in the name of the Minister. R.S.O. 1970, c. 119, s. 10.

CHAPTER 288

Ministry of the Solicitor General Act

1. In this Act, “Ministry” means the Ministry of the Solicitor General. 1972, c. 2, s. 1. Interpre-
tation

2.—(1) The ministry of the public service known as the Ministry of the Solicitor General is continued. Ministry
continued

(2) The Solicitor General shall preside over and have charge of the Ministry. 1972, c. 2, s. 2. Solicitor
General to
have charge

3.—(1) The Lieutenant Governor in Council may appoint a Deputy Solicitor General who shall be the deputy head of the Ministry. Deputy
Solicitor
General

(2) Such officers, clerks and servants may be appointed under the *Public Service Act* as are required from time to time for the proper conduct of the business of the Ministry. 1972, c. 2, s. 3. Staff
R.S.O. 1980,
c. 418

4. The moneys required for the purposes of the Ministry shall be paid out of the moneys appropriated therefor by the Legislature. 1972, c. 2, s. 4. Moneys
required by
Ministry

5. The Solicitor General is responsible for the administration of this Act, any Acts that are assigned to him by the Legislature or by the Lieutenant Governor in Council and the following Acts:

- | | |
|---|------------------------|
| 1. <i>Anatomy Act.</i> | R.S.O. 1980,
c. 21 |
| 2. <i>Coroners Act.</i> | R.S.O. 1980,
c. 93 |
| 3. <i>Egress from Public Buildings Act.</i> | R.S.O. 1980,
c. 130 |
| 4. <i>Fire Accidents Act.</i> | R.S.O. 1980,
c. 163 |
| 5. <i>Fire Departments Act.</i> | R.S.O. 1980,
c. 164 |
| 6. <i>Fire Fighters' Exemption Act.</i> | R.S.O. 1980,
c. 165 |
| 7. <i>Fire Marshals Act.</i> | R.S.O. 1980,
c. 166 |

R.S.O. 1980,
c. 207

8. *Hotel Fire Safety Act.*

R.S.O. 1980,
c. 210

9. *Human Tissue Gift Act.*

R.S.O. 1980,
c. 239

10. *Lightning Rods Act.*

R.S.O. 1980,
c. 356

11. *Ontario Society for the Prevention of Cruelty to Animals Act.*

R.S.O. 1980,
c. 381

12. *Police Act.*

R.S.O. 1980,
c. 390

13. *Private Investigators and Security Guards Act.*

R.S.O. 1980,
c. 426

14. *Public Works Protection Act.*

R.S.O. 1980,
c. 453

15. *Retail Business Holidays Act.* 1972, c. 2, s. 5, revised.

Annual
report

6. The Solicitor General, after the close of each year, shall submit to the Lieutenant Governor in Council an annual report upon the affairs of the Ministry and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. 1972, c. 2, s. 6.

CHAPTER 289

Ministry of Transportation and
Communications Act

1. In this Act,

Interpre-
tation

(a) "Minister" means the Minister of Transportation and Communications;

(b) "Ministry" means the Ministry of Transportation and Communications. 1971, c. 13, s. 1; 1972, c. 1, s. 1.

2.—(1) The ministry of the public service known as the Ministry of Transportation and Communications is continued. 1972, c. 1, s. 100 (1), *revised*. Ministry continued

(2) The Minister shall preside over and have charge of the Ministry. 1971, c. 13, s. 2 (2); 1972, c. 1, s. 1. Minister to have charge

(3) Such officers, clerks and servants may be appointed under the *Public Service Act* as are required from time to time for the proper conduct of the business of the Ministry. 1971, c. 13, s. 2 (3); 1972, c. 1, s. 1. Staff
R.S.O. 1980,
c. 418

3. The Minister is responsible for the administration of this Act and any other Acts that are assigned to him by the provisions thereof or by the Lieutenant Governor in Council. 1971, c. 13, s. 3. Duties of Minister

4.—(1) Any power conferred or duty imposed on the Minister by this or any other Act may be delegated by him in writing, subject to such limitations, conditions and requirements as the Minister may set out in the delegation, to the Deputy Minister of Transportation and Communications or to any officer of the Ministry who may act for him in his place and stead, and when the Deputy Minister of Transportation and Communications or such other officer acts in the place and stead of the Minister, it shall be presumed conclusively that he acted in accordance with such delegation. Delegation of powers and duties of Minister

(2) Notwithstanding the *Executive Council Act*, a deed or a contract made by a person empowered to do so under subsection (1) has the same effect as if signed by the Minister. 1979, c. 6, s. 1. Effect of R.S.O. 1980, c. 147

Enforce-
ment of
contracts

5. Contracts respecting any work or property under the control of the Ministry that are entered into by the Minister or by any other person duly authorized to enter into them enure to the benefit of the Crown and may be enforced as if entered into with the Crown. 1971, c. 13, s. 7; 1972, c. 1, s. 1.

Possession
of maps,
etc., relat-
ing to
highways

6. The Minister may require a person having possession of a map, plan, specification, estimate, report or other paper, book, drawing, instrument, model, contract, document, record or thing relating to a work under the control of the Ministry, and not being private property, to deliver it without delay to the Ministry. 1971, c. 13, s. 8; 1972, c. 1, s. 1.

Provincial
agreements
re licensing
and fees of
commercial
motor
vehicles,
etc.

7.—(1) The Minister, with the approval of the Lieutenant Governor in Council, may make reciprocal arrangements and enter into agreements with the government or governments of any province or provinces of Canada,

- (a) providing for the licensing of public commercial vehicles and public vehicles, for the registration of commercial motor vehicles and trailers, and for exemptions from such licensing and registration;
- (b) prescribing the fees to be paid therefor and providing for the payment and apportionment of such fees; and
- (c) providing for such other related matters as are considered necessary.

Acts
subject to
agreement
R.S.O. 1980,
cc. 198, 407,
425

(2) The provisions of the *Highway Traffic Act*, the *Public Commercial Vehicles Act* and the *Public Vehicles Act* and regulations made thereunder, with respect to licensing and registration of vehicles, are subject to any agreement entered into under this section.

Public
commercial
vehicles

(3) A public commercial vehicle licence issued for a commercial motor vehicle or trailer by a province with which an agreement has been entered into under this section with respect to such a licence shall be deemed for the purposes of the *Public Commercial Vehicles Act* to be a public commercial vehicle licence under that Act.

R.S.O. 1980,
c. 407

Public
vehicles

(4) A public vehicle licence issued for a public vehicle by a province with which an agreement has been entered into under this section with respect to such a licence shall be deemed for the purposes of the *Public Vehicles Act* to be a public vehicle licence under that Act.

R.S.O. 1980,
c. 425

Commercial
motor
vehicles

(5) A permit for the registration of a commercial motor vehicle or trailer issued by a province with which an agreement

has been entered into under this section with respect to such a permit shall be deemed for the purposes of the *Highway Traffic Act* to be a permit for the registration of such vehicle under that Act.

R.S.O. 1980,
c. 198

(6) Where a licence or permit issued by a province with which an agreement has been entered into under this section is deemed for the purposes of any Act of the Legislature to be a licence or permit under such Act, the provisions of such Act with respect to suspension or cancellation of such a licence or permit apply in so far as the licence or permit is effective in Ontario. 1971, c. 13, s. 9 (1-6).

Suspension
of licences
or permits

(7) Any arrangement or agreement made or entered into under a predecessor of this section that is in effect on the 28th day of May, 1971 shall be deemed to be an arrangement or agreement made or entered into under this section. 1971, c. 13, s. 9 (7), *revised*.

Arrange-
ment, etc.,
made under
predecessor
of section

8. The Minister after the close of each year shall submit to the Lieutenant Governor in Council an annual report upon the affairs of the Ministry and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. 1971, c. 13, s. 10; 1972, c. 1, s. 1.

Annual
Report

CHAPTER 290

Ministry of Transportation and
Communications Creditors Payment Act

1. In this Act,

Interpre-
tation

- (a) “claimant” means a creditor who has sent a notice under subsection 2 (1);
- (b) “contract” means a written agreement between the Minister and a person for the performance of work and under which the Minister is obligated to pay for the total cost thereof;
- (c) “contractor” means a person who enters into a contract with the Minister;
- (d) “creditor” means a person who supplies labour, materials or services used or reasonably required for use in the performance of work as set out in a contract;
- (e) “Minister” means the Minister of Transportation and Communications;
- (f) “Ministry” means the Ministry of Transportation and Communications;
- (g) “person” means an individual, partnership or corporation but does not include a municipal corporation;
- (h) “surety” means a person who guarantees to the Minister the payment of creditors under a bond with the Minister;
- (i) “work” means a construction, reconstruction, improvement, alteration, expansion, addition to, repair or maintenance of property. 1975, c. 44, s. 1.

2.—(1) Where a contractor does not pay a creditor in accordance with his obligation to do so under the contract, the creditor may, not later than 120 days after the last day on which the labour, materials or services were provided, send to the appropriate office of the Ministry by registered

Service of
notice of
non-payment

mail a notice setting out the nature and amount of his claim.

Payment
of claim

(2) The Minister may, after notice in writing to the contractor and surety, if any, pay the claimant the amount settled upon and deduct the amount so paid from any moneys due or that may become due to the contractor on any account or from the moneys or securities, if any, deposited by the contractor with the Ministry, and, if there are insufficient moneys due or to become due to the contractor to permit of such deduction, the surety, if any, shall pay to the Ministry upon demand an amount sufficient to make up the deficiency.

Amount
paid final

(3) In paying a claim under subsection (2), the Minister may act upon any evidence that he considers sufficient and may compromise any disputed liability, and such payment is not open to dispute or question by the contractor or the surety, if any, but is final and binding upon them. 1975, c. 44, s. 2.

Minister
may demand
list of
creditors

3. The Minister may, in writing, require a contractor to send to him by registered mail, within fifteen days from the date of the mailing of the demand, a list of the names of and the amounts owing to his creditors. 1975, c. 44, s. 3.

Contractors
to display
s. 2 (1)

4. Every contractor shall display and keep displayed in a conspicuous place where the work is being performed a copy of subsection 2 (1). 1975, c. 44, s. 4.

Offences

5. A contractor who does not file a list when required to do so under section 3 or who does not display and keep displayed a copy of subsection 2 (1) as required by section 4 is guilty of an offence and on conviction is liable to a fine of not less than \$10 and not more than \$100 for every day during which the default continues. 1975, c. 44, s. 5.

Regulations

6.—(1) The Lieutenant Governor in Council may make regulations,

- (a) extending or reducing the periods of time referred to in sections 2 and 3;
- (b) providing for and requiring notices in addition to the notice mentioned in section 2;
- (c) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

Application

(2) Any regulation made under subsection (1) or any provision thereof may be made applicable in respect of any class or classes of contractor. 1975, c. 44, s. 6.

CHAPTER 291

Ministry of Treasury and Economics Act

1. In this Act,

Interpre-
tation

- (a) "appropriation" means an authority to pay money out of the Consolidated Revenue Fund;
- (b) "Consolidated Revenue Fund" means the aggregate of all public moneys that are on deposit at the credit of the Treasurer or in the name of any agency of the Crown approved by the Lieutenant Governor in Council;
- (c) "Deputy Treasurer" means the Deputy Treasurer of Ontario and Deputy Minister of Economics;
- (d) "fiscal year" means the period from the 1st day of April in one year to the 31st day of March in the next year;
- (e) "minister" means a member of the Executive Council;
- (f) "ministry" means a ministry of the Government of Ontario and includes a board, commission, authority, corporation and any other agency of the Government of Ontario;
- (g) "public money" means all money belonging to Ontario received or collected by the Treasurer or by any other public officer or by any person authorized to receive and collect such money and includes,
 - (i) special funds of Ontario and the income and revenue therefrom,
 - (ii) revenues of Ontario,
 - (iii) money raised by way of loan by Ontario or received by Ontario through the issue and sale of securities, and

(iv) money paid to Ontario for a special purpose;

(h) "public officer" includes a minister and a person employed in a ministry;

(i) "Treasurer" means the Treasurer of Ontario and Minister of Economics. 1978, c. 62, s. 1.

Ministry
continued

2. The ministry of the public service known as the Ministry of Treasury and Economics is continued. 1978, c. 62, s. 2, *revised*.

Treasurer to
have charge

3. The Treasurer shall preside over and have charge of the Ministry of Treasury and Economics and has power to act for and on behalf of the Ministry. 1978, c. 62, s. 3.

Seal

4.—(1) The Lieutenant Governor in Council may authorize a seal for the Treasurer and prescribe its use on documents.

Mechanical
reproduction
of seal

(2) The seal may be reproduced by engraving, lithographing, printing or any other method of mechanical reproduction, and when so reproduced has the same force and effect as if manually affixed. 1978, c. 62, s. 4.

Duties of
Treasurer

5.—(1) The Treasurer shall direct and control the Ministry of Treasury and Economics, recommend to the Executive Council finance, economic, accounting and taxation policy, supervise, direct and control all finance, economic, statistical and accounting functions and manage the Consolidated Revenue Fund and all public money.

Administra-
tion of Acts

(2) The Treasurer is responsible for the administration of this Act, the Acts set out in the Schedule and the Acts that are assigned to him by the Legislature or by the Lieutenant Governor in Council. 1978, c. 62, s. 5.

Deputy
Treasurer

6.—(1) The Lieutenant Governor in Council shall appoint a Deputy Treasurer of Ontario and Deputy Minister of Economics who shall be the deputy head of the Ministry of Treasury and Economics.

Duties of
Deputy
Treasurer

(2) Under the direction of the Treasurer, the Deputy Treasurer shall perform such duties as the Treasurer may assign or delegate to him.

Delegation
of powers
and duties of
Treasurer

(3) Any power or duty conferred on the Treasurer by this or any other Act may be delegated by him, in writing, subject to such limitations, conditions and requirements as the Treasurer may set out in the delegation, to the Deputy Treasurer or to any officer of the Ministry of Treasury and

Economics who may act for him in his place and stead, and when the Deputy Treasurer or such other officer acts in the place and stead of the Treasurer, it shall be presumed conclusively that he acted in accordance with such delegation.

(4) Notwithstanding the *Executive Council Act*, a contract or an agreement made by a person empowered to do so under subsection (3) has the same effect as if made and signed by the Treasurer. 1978, c. 62, s. 6. Effect of R.S.O. 1980, c. 147

7.—(1) No action or other proceeding for damages shall be instituted against the Deputy Treasurer or any officer or employee of the Ministry or anyone acting under his authority for any act done in good faith in the execution or intended execution of his duty or for any alleged neglect or default in the execution in good faith of his duty. Protection from personal liability

(2) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (1) had not been enacted. 1978, c. 62, s. 7. Idem R.S.O. 1980, c. 393

8. The responsibility for the conduct of the financial business of each ministry shall rest with the head of the ministry, and the accounts, before being recommended to the Treasurer for payment, shall be checked and examined in detail and certified as correct in every respect and allowed and passed by the proper officers of the ministry. 1978, c. 62, s. 8. Responsibility with head of ministry

9.—(1) The certificate or order of the Attorney General or Deputy Attorney General that a sum of money is required to be paid out of the Consolidated Revenue Fund on account of the investigation, detection or punishment of any offence against the laws of Ontario or of Canada, or on account of special services or disbursements in connection with inquests, or any purpose connected with the administration of justice in either civil or criminal matters, is sufficient authority for the issuing of a cheque by the Treasurer for the amount named in the certificate or order, and the officer or other person to whom the cheque is issued shall account to the Attorney General for the proper disbursement of the amount received by such officer or other person. Payment for special cases

(2) The certificate of the Attorney General or Deputy Attorney General that any moneys received by any officer or other person under this section have been duly accounted Certificate of Attorney General or Deputy A.G.

for is final and conclusive and the account shall not be subject to any further examination. 1978, c. 62, s. 9.

Issue of
cheques
may be
withheld

10.—(1) The Treasurer may withhold the issue of a cheque for the payment of public money if he has reason to believe that there is no authority for the payment.

Reference to
Management
Board of
Cabinet

(2) When the issue of a cheque has been withheld under subsection (1), the Treasurer or the minister responsible may refer the matter to the Management Board of Cabinet for determination. 1978, c. 62, s. 10.

Information
and access
to records

11. Every ministry of the public service shall furnish the Treasurer with such information regarding its powers, duties, activities, organization, financial transactions and methods of business as he from time to time requires, and the Treasurer shall have access to all books, accounts, financial records, reports, files and other papers, things or property belonging to or in use by the ministry and shall be afforded every facility for verifying transactions with the balances or securities held by depositaries, fiscal agents or custodians. 1978, c. 62, s. 11.

Fiscal
year

12.—(1) The Public Accounts shall cover the fiscal year.

Estimates

(2) All estimates submitted to the Legislature shall be for expenditures coming in course of payment during the fiscal year.

Lapse of
appro-
priations

(3) All balances of appropriations that remain unexpended at the end of a fiscal year shall lapse, except that during the period of thirty days next following the end of such fiscal year there may be paid out of any appropriation an amount not exceeding the unexpended balance of the appropriation for the purpose of discharging any debt that was incurred during such fiscal year, and the expenditure may be charged in the accounts of such fiscal year, but any debts that remain unpaid at the end of the period of thirty days next following the end of such fiscal year shall be paid out of the appropriation for the ensuing fiscal year. 1978, c. 62, s. 12.

Preparation
of Public
Accounts

13. The Public Accounts for each fiscal year shall be prepared under the direction of the Treasurer and shall be delivered to the Lieutenant Governor in Council and laid before the Assembly not later than the tenth day of the first session held in the following calendar year. 1978, c. 62, s. 13.

Payments
authorized
by Assembly

14. Notwithstanding anything in this Act, whenever the Assembly has concurred in the report of the Committee of

Supply recommending the passing of any estimates, the Lieutenant Governor in Council may authorize the payment of any items of expenditure so concurred in. 1978, c. 62, s. 14.

15. Every person who is to examine the accounts or inquire into the affairs of any ministry pursuant to this Act shall be required to comply with any security requirements applicable to, and to take any oath of secrecy required to be taken by, persons employed in that ministry. 1978, c. 62, s. 15.

Oath of
secrecy

16.—(1) A reference to the Treasurer of Ontario and Minister of Economics and Intergovernmental Affairs in any contract, order in council, security or other document being of a finance, economic, taxation, statistical or accounting nature shall be deemed to be a reference to the Treasurer of Ontario and Minister of Economics.

References to
Treasurer of
Ontario and
Minister of
Economics
and Inter-
governmental
Affairs

(2) A reference to the Treasurer of Ontario in any Act or regulation shall be deemed to be a reference to the Treasurer of Ontario and Minister of Economics.

References
to Treasurer
of Ontario

(3) A reference to the Department of Treasury and Economics or a reference to the Ministry of Treasury, Economics and Intergovernmental Affairs in any contract, order in council, security or other document described in subsection (1) shall be deemed to be a reference to the Ministry of Treasury and Economics. 1978, c. 62, s. 16, *revised*.

References
to Ministry
of Treasury,
Economics
and Inter-
governmental
Affairs

17. The Lieutenant Governor in Council may by order amend the Schedule. 1978, c. 62, s. 17.

Power to
amend
Schedule

SCHEDULE

*Audit Act**Farm Loans Act**Farm Loans Adjustment Act**Financial Administration Act**Gold Clauses Act**Ontario Economic Council Act**Ontario Education Capital Aid Corporation Act**Ontario Guaranteed Annual Income Act**Ontario Loan Act**Ontario Municipal Employees Retirement System Act**Ontario Municipal Improvement Corporation Act**Ontario Universities Capital Aid Corporation Act**Statistics Act**Supply Act*

1978, c. 62, Sched. 1; O. Reg. 408/79, s. 1, *revised*.

CHAPTER 292

Minors Act

1.—(1) The court, upon the application of the father or the mother of a minor, who may apply without a next friend, may make such order as the court sees fit regarding the custody of the minor and the right of access thereto of either parent, having regard to the welfare of the minor, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary or discharge the order on the application of either parent, or, after the death of either parent, of any guardian appointed under this Act, and in every case may make such order respecting the costs of the mother and the liability of the father for such costs, or otherwise, as the court considers just.

Orders as to custody of and right of access to minor, at the instance of father or mother

(2) In subsection (1), “court” means the Supreme Court or the surrogate court of the county or district in which the minor resides at the time the proceedings under that subsection are commenced.

Meaning of “court”

(3) Where,

Removal of proceedings to Supreme Court

- (a) custody proceedings have been commenced in a surrogate court under subsection (1); and
- (b) it is made to appear to a judge of the Supreme Court that proceedings in respect of custody of children, alimony, dissolution of marriage or annulment of marriage are pending between the father and mother in the Supreme Court,

the judge of the Supreme Court may order that the custody proceedings in the surrogate court be removed to the Supreme Court, and may make such order as to the hearing of the application for custody and as to costs as he considers proper. R.S.O. 1970, c. 222, s. 1 (1-3).

(4) On an application under this section, the court may require the Official Guardian to cause an investigation to be made and to report to the court upon all matters relating to the custody, maintenance and education of the child, in which case section 1 of the *Matrimonial Causes Act* applies with necessary modifications and the court may make an order for the

Investigation by Official Guardian

R.S.O. 1980, c. 258

payment of the Official Guardian's costs. R.S.O. 1970, c. 222, s. 1 (6).

Father and mother to be joint guardians

2. Unless otherwise ordered by the court and subject to this Act, the father and mother of a minor are joint guardians and are equally entitled to the custody, control and education of the minor. R.S.O. 1970, c. 222, s. 2 (1).

Rules of equity

3. In questions relating to the custody and education of minors, the rules of equity prevail. R.S.O. 1970, c. 222, s. 3.

Where sale or lease of minor's estate may be authorized

4.—(1) Where a minor is seised, possessed of or entitled to any real estate in fee or for a term of years or otherwise and the Supreme Court is of opinion that a sale, mortgage, lease or other disposition of the real estate or of a part thereof, or of any timber, not being ornamental, growing thereon, is necessary or proper for the maintenance or education of the minor, or that for any cause his interest requires or will be substantially promoted by the disposition, the court may order the sale, mortgage, or the letting for a term of years, or other disposition of the real estate or a part thereof, to be made under the direction of the court or of one of its officers, or by the guardian of the minor, or by a person appointed for the purpose, in such manner and with such restrictions as are considered expedient, and may order the minor to convey the estate.

Exception

(2) No sale, mortgage, lease or other disposition shall be made contrary to a will or conveyance by which the estate has been devised or granted to the minor or for his use.

Authorizing exchange of unproductive for productive property

(3) The court, if it is of opinion that such course is for the benefit of the minor or that his interest requires it or will be substantially promoted thereby, may from time to time authorize the exchange of any lands held in fee or for a term of years or otherwise by the minor, and that are unproductive, for lands that are productive, but no such exchange of lands shall be made contrary to a will or conveyance.

Procedure

(4) Every exchange of lands made under subsection (3) shall be conducted and confirmed in such manner as is required by the rules and practice of the Supreme Court in the case of the sale or other disposition of the lands of minors. R.S.O. 1970, c. 222, s. 4.

Surrender of lease

5. The Supreme Court may sanction the surrender of any lease to which a minor is entitled and, if considered expedient, the acceptance of a new lease in lieu thereof. R.S.O. 1970, c. 222, s. 5.

6. Where a minor is entitled to lands subject to a lease^{Renewal of lease} containing a covenant for renewal, the Supreme Court may sanction the execution of a new lease in accordance with the covenant or with such modification as is considered expedient. R.S.O. 1970, c. 222, s. 6.

7. Every surrender or lease made or accepted by virtue of this Act shall be deemed to be as valid and effectual as if the person by whom or in whose place it was made or accepted had been of full age and had made or accepted it. R.S.O. 1970, c. 222, s. 7.

8. Where it is considered convenient, the court may direct^{Conveyance by a substitute} some other person to execute a conveyance, mortgage, lease or other document in the place of the minor and every such conveyance, mortgage, lease or other document, whether executed by the minor or by such other person, is as effectual as if the minor had executed it and had been of the age of eighteen years at the time. R.S.O. 1970, c. 222, s. 8.

9. Where a minor is seised of the reversion of land subject to a lease and the lease contains a covenant not to assign^{Consent to assignment of lease by minor} or sublet without leave, the Supreme Court may, on behalf of the minor, consent to an assignment or transfer of the leasehold interest in the same manner and with the like effect as if the consent were given by a lessor under no such disability. R.S.O. 1970, c. 222, s. 9.

10. Where by a will or other instrument property is given^{Order for maintenance where power of appointment in favour of children} beneficially to a person for his life with a power of devising or appointing the property by will in favour of his children or of one or more of them, the Supreme Court may, on the application or with the consent of the tenant for life, order that such portion of the proceeds of the property as it considers proper shall be applied towards the maintenance or education of any minor child in whose favour the power might be exercised, notwithstanding that there is a gift over in the event of there being no children to take under the power, or that there is a right conferred upon the tenant for life, or upon some other person in such event to make a disposition of the property in favour of some person other than such children. R.S.O. 1970, c. 222, s. 11.

11.—(1) The Supreme Court may order and direct the sale^{Order for application of dividends of stock for maintenance of minors} of any personal property of a minor, including any stock or bonds to which he is entitled, and may direct any money belonging to a minor and all or any part of the dividends in respect of the stock or bonds to be paid for the maintenance and education or otherwise for the benefit of the minor, and

payment in accordance with such an order operates as a full release and discharge from all liability with respect to the money paid, and a transfer of any stock or bonds so sold shall be made in such manner as the court directs.

Indemnity
to banks,
etc.

(2) Such an order is a full and complete indemnity and discharge to all banks, companies and societies and their officers and servants for all acts and things done or permitted to be done pursuant thereto. R.S.O. 1970, c. 222, s. 12.

Appoint-
ment of
guardians
by surrogate
court

12.—(1) The surrogate court of the county or district in which a minor resides may appoint the father or mother of the minor or may, with the consent of the father, if known, and the mother or of the surviving parent, appoint some other suitable person or persons to be the guardian or guardians of the minor, but if the minor is of the age of fourteen years, no such appointment shall be made without his consent. R.S.O. 1970, c. 222, s. 16 (1); 1977, c. 41, s. 18 (1).

Where no
father or
authorized
guardian or
minor does
not consent

(2) If the minor has no known parent living or a guardian authorized by law to take the care of his person and the charge of his estate, if any, or if he is of the age of fourteen years and does not give the consent mentioned in subsection (1), upon the written application of the minor, or of a friend of the minor residing within the jurisdiction of the surrogate court to which the application is made, and after proof of twenty days public notice of the application in a newspaper published in the county or district of the surrogate court in which the application is made, the court may appoint some suitable and discreet person or persons to be guardian or guardians of the minor, whether the minor is or is not entitled to any property. R.S.O. 1970, c. 222, s. 16 (2); 1977, c. 41, s. 18 (2).

Letters of
guardian-
ship have
effect
throughout
Ontario

(3) Letters of guardianship granted by a surrogate court have force and effect in all parts of Ontario, and an official certificate of the grant may be obtained as in the case of letters of administration. R.S.O. 1970, c. 222, s. 16 (3).

Security by
the guardian
R.S.O. 1980,
cc. 192, 95

13. Subject to the *Guarantee Companies Securities Act* and the *Corporations Act*, the court shall take from every guardian appointed under section 12 a bond in the name of the minor in such penal sum and with such sureties as the judge approves, conditioned that the guardian will faithfully perform his trust and that he or his executors or administrators will, when the minor becomes of the full age of eighteen years or when the guardianship is determined or sooner if thereto required by law, render a true and just account of all goods, money, interest, rents, profits or other estate of the minor that have come into the hands of the guardian, and will thereupon

without delay deliver and pay over to the minor or to his executors or administrators the estate or the sum that may be in the hands of the guardian belonging to the minor, deducting therefrom and retaining a reasonable sum for the expenses and charges of the guardian, and the bond shall be recorded by the registrar of the court in the books of his office. R.S.O. 1970, c. 222, s. 17; 1971, c. 98, s. 4, Sched., par. 14.

14.—(1) Testamentary guardians and guardians appointed or constituted by virtue of this Act are removable by the Supreme Court or by the surrogate court for the same causes for which trustees are removable. Removal of guardians

(2) Any such guardian may, by leave of the court, resign his office upon such terms and conditions as are considered just. R.S.O. 1970, c. 222, s. 18. Resignation of office by guardian

15. A return of every appointment and removal or resignation of a guardian shall be made by the registrar of the court to the surrogate clerk in like manner as is required by the *Surrogate Courts Act* in the case of grants of probate or administration. R.S.O. 1970, c. 222, s. 19. Returns respecting guardians to surrogate court
R.S.O. 1980, c. 491

16. Unless where the authority of a guardian appointed or constituted by virtue of this Act is otherwise limited, the guardian so appointed or constituted during the continuance of his guardianship, Guardian's authority

(a) has authority to act for and on behalf of the minor; and

(b) has the charge and management of his estate, real and personal, and the custody of his person and the care of his education. R.S.O. 1970, c. 222, s. 20.

17. An appeal lies from an order or judgment of a surrogate court under this Act to the Court of Appeal. R.S.O. 1970, c. 222, s. 21. Appeal

18. The practice and procedure under the *Surrogate Courts Act* and rules apply to proceedings in the surrogate court under this Act, and the power to make rules under that Act applies to proceedings under this Act. R.S.O. 1970, c. 222, s. 22. Practice and procedure

19. Nothing in this Act deprives the Supreme Court of jurisdiction in matters provided for by this Act. R.S.O. 1970, c. 222, s. 23. Jurisdiction of Supreme Court not affected

Religious
education
of minor

20. Nothing in this Act changes the law as to the authority of the father in respect of the religious faith in which his child is to be educated. R.S.O. 1970, c. 222, s. 24.

CHAPTER 293

Minors' Protection Act

1.—(1) No person shall either directly or indirectly sell or ^{Supplying tobacco} give or furnish to a child under eighteen years of age cigarettes, cigars or tobacco in any form.

(2) This section does not apply to a sale to a child for his ^{Exception} parent or guardian under a written request or order of the parent or guardian. R.S.O. 1970, c. 276, s. 1.

2.—(1) Every person who contravenes any of the provisions ^{Offence} of this Act is guilty of an offence and on conviction is liable to a fine of not less than \$2 and not more than \$50.

(2) Prosecutions under this Act shall be tried in a provincial ^{Primary jurisdiction in provincial court (family division)} court (family division).

(3) A person who appears to the court to be under eighteen ^{Presumption as to age} years of age shall be deemed to be under that age unless it is found that he is in fact over that age. R.S.O. 1970, c. 276, s. 2.

CHAPTER 294

Moosonee Development Area Board Act

1. In this Act,

Interpre-
tation

- (a) "Board" means The Moosonee Development Area Board;
- (b) "Development Area" means the area defined in Schedule A;
- (c) "Minister" means the Minister of Intergovernmental Affairs or such other member of the Executive Council to whom the administration of this Act is assigned by the Lieutenant Governor in Council. R.S.O. 1970, c. 277, s. 1, *revised*.

2.—(1) The Moosonee Development Area Board is con-
tinued as a corporation without share capital. R.S.O. 1970,
c. 277, s. 2 (1).

Board,
continued

(2) The Board shall consist of seven members appointed and
designated as chairman, vice-chairman and members by the
Lieutenant Governor in Council. R.S.O. 1970, c. 277, s. 2 (2);
1974, c. 76, s. 1 (1).

composition

(3) Four members of the Board constitute a quorum. R.S.O.
1970, c. 277, s. 2 (3); 1974, c. 76, s. 1 (2).

quorum

(4) If a vacancy occurs on the Board through death,
resignation or otherwise, the vacancy may be filled and the
members may be redesignated by the Lieutenant Governor
in Council.

vacancy

(5) The Board shall be deemed to be a local board for the
purposes of the *Ontario Municipal Employees Retirement
System Act*.

deemed
local board
under
R.S.O. 1980,
c. 348

(6) The Board shall appoint a secretary-treasurer who may
be a member of the Board, who shall hold office during
pleasure and, with respect to the Development Area, has the
powers and shall perform the duties of the clerk, treasurer
and collector of a municipality. R.S.O. 1970, c. 277, s. 2 (4-6).

Secretary-
treasurer

3. For the purposes of every Act, the Board, in respect of
the purposes specified in Schedule B, has, in the Development
Area, all the powers and duties of the council of a township
including, but without limiting the generality of the foregoing,

Powers of
Board

the power to levy, impose and collect taxes and rates, and, when any such power or duty is exercised under any Act in respect of any of such purposes, the Act applies with necessary modifications. R.S.O. 1970, c. 277, s. 3.

Further
powers of
Board

4. In addition to the powers provided in section 3, the Board may,

(a) acquire and hold land within the Development Area for development purposes;

(b) survey, clear, grade, subdivide and service such land; and

(c) sell, lease or otherwise dispose of such land. R.S.O. 1970, c. 277, s. 4.

District
assessor
R.S.O. 1980,
c. 31

5. The Development Area is a locality for the purposes of the *Assessment Act*. R.S.O. 1970, c. 277, s. 5.

Application of
R.S.O. 1980,
c. 303

6. The Board is subject to Part III of the *Municipal Affairs Act* as though it were a municipality. R.S.O. 1970, c. 277, s. 6; 1972, c. 1, s. 104 (6).

Grants

7. The Minister may make grants to the Board out of the moneys appropriated therefor by the Legislature. R.S.O. 1970, c. 277, s. 7.

Application of
R.S.O. 1980,
c. 399

8. The *Provincial Land Tax Act* does not apply to the Development Area. R.S.O. 1970, c. 277, s. 8.

Board not
municipality
under
R.S.O. 1980,
c. 347

9. Except as otherwise provided in this Act, the Board is not a municipality under the *Ontario Municipal Board Act*. R.S.O. 1970, c. 277, s. 9.

Develop-
ment Area
deemed
municipality
under
R.S.O. 1980,
cc. 349, 347

10. For the purposes of the *Ontario Municipal Improvement Corporation Act* and sections 57, 58, 59, 60 and 61 of the *Ontario Municipal Board Act*, the Board shall be deemed to be a municipality and the approval of the Ministry of Intergovernmental Affairs shall be deemed to be an approval of the Ontario Municipal Board under sections 64 and 65 of the *Ontario Municipal Board Act*. R.S.O. 1970, c. 277, s. 10; 1972, c. 3, s. 17 (2).

Develop-
ment Area
remains
territory

11. The Development Area shall remain territory without municipal organization. R.S.O. 1970, c. 277, s. 11.

Application of
R.S.O. 1980,
c. 95

12. The *Corporations Act* does not apply to the Board. R.S.O. 1970, c. 277, s. 12.

Regulations

13. The Lieutenant Governor in Council may make regulations amending Schedule B. R.S.O. 1970, c. 277, s. 13.

- (d) the requirements of section 13 have not been complied with in any substantial respect;
- (e) the proposed methods of offering do not accord with standard real estate practices in Ontario.

(2) Where the Registrar proposes to refuse to grant a ^{Application of s. 7} certificate of acceptance, he shall serve notice of his proposal to refuse on the person on whose behalf the prospectus was filed and section 7 applies with necessary modifications to the proposal in the same manner as to a proposal to refuse to register an applicant. 1975, c. 28, s. 2, *part*.

16.—(1) Where it appears to the Registrar, subsequent to the filing of a prospectus and the granting of a certificate of acceptance therefor, that any of the conditions referred to in subsection 15 (1) exist or there has been any contravention of the Act or regulations, he may revoke the certificate of acceptance, which thereupon shall be deemed not to be issued. ^{Revocation of certificate of acceptance}

(2) Subject to subsection (3), the Registrar shall not revoke a certificate of acceptance and make an order under subsection (1) without serving notice of his proposal to revoke the certificate and make the order, together with written reasons therefor, on the person on whose behalf the prospectus was filed, and section 7 applies with necessary modifications to the proposal in the same manner as to a proposal by the Registrar to revoke a registration. ^{Application of s. 7}

(3) Where the Registrar proposes to revoke a certificate of acceptance, the Registrar may, where the Registrar considers it to be necessary in the public interest, by order temporarily suspend the certificate of acceptance and the order shall take effect immediately and, where a hearing is required, the order expires fifteen days from the date of the notice requiring the hearing unless the hearing is commenced in which case the Tribunal holding the hearing may extend the time of expiration until the hearing is concluded. ^{Interim suspension}
1975, c. 28, s. 2, *part*.

17.—(1) If a change occurs with regard to any of the ^{Amendment of prospectus} matters set out in any prospectus,

- (a) that would have the effect of rendering a statement in the prospectus false or misleading; or
- (b) that brings into being a fact or proposal that should have been disclosed in the prospectus if the fact or proposal had existed at the time of filing,

the person who filed the prospectus shall, within twenty days of the change occurring, notify the Registrar in writing of the change and shall file an amendment to the prospectus or a new prospectus as the Registrar may direct.

Application
of ss. 13-16

(2) Sections 13 to 16 apply with necessary modifications where a prospectus is amended or a new prospectus filed under subsection (1). 1975, c. 28, s. 2, *part*.

Expiration of
certificate of
acceptance

18. A certificate of acceptance expires twelve months after it is issued and shall thereupon be deemed not to be issued, subject to the right to file a new prospectus and obtain a certificate of acceptance therefor in accordance with this Act. 1975, c. 28, s. 2, *part*.

Advertising

19. No person shall publish or cause to be published any advertisement for mortgage transactions on a lot or unit in a subdivision located outside Ontario until the advertisement has been approved by the Registrar. 1975, c. 28, s. 2, *part*.

Investiga-
tion of
complaints

20.—(1) Where the Registrar receives a complaint in respect of a mortgage broker and so requests in writing, the mortgage broker shall furnish the Registrar with such information respecting the matter complained of as the Registrar requires.

Idem

(2) The request under subsection (1) shall indicate the nature of the inquiry involved.

Idem

(3) For the purposes of subsection (1), the Registrar or any person designated in writing by him may at any reasonable time enter upon the business premises of the mortgage broker to make an inspection in relation to the complaint. R.S.O. 1970, c. 278, s. 22.

Inspection

21.—(1) The Registrar or any person designated by him in writing may at any reasonable time enter upon the business premises of the registrant to make an inspection to ensure that the provisions of this Act and the regulations relating to registration and the maintenance of trust accounts are being complied with.

Idem

(2) Where the Registrar has reasonable and probable grounds to believe that any person is acting as a mortgage broker while unregistered, the Registrar or any person

designated by him in writing may at any reasonable time enter upon such person's business premises to make an inspection for the purpose of determining whether or not the person is in contravention of section 4. R.S.O. 1970, c. 278, s. 23.

22.—(1) Upon an inspection under section 20 or 21, the person inspecting, Powers on inspection

(a) is entitled to free access to all books of account, cash, documents, bank accounts, vouchers, correspondence and records of the person being inspected that are relevant for the purposes of the inspection; and

(b) may, upon giving a receipt therefor, remove any material referred to in clause (a) that relates to the purpose of the inspection for the purpose of making a copy thereof, provided that such copying is carried out with reasonable dispatch and the material in question is promptly thereafter returned to the person being inspected,

and no person shall obstruct the person inspecting or withhold or destroy, conceal or refuse to furnish any information or thing required by the person inspecting for the purposes of the inspection. R.S.O. 1970, c. 278, s. 24 (1); 1971, c. 50, s. 59 (3).

(2) Any copy made as provided in subsection (1) and purporting to be certified by an inspector is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original. R.S.O. 1970, c. 278, s. 24 (2). Admissibility of copies

23. The Minister may by order appoint a person to make an investigation into any matter to which this Act applies as may be specified in the Minister's order and the person appointed shall report the result of his investigation to the Minister and, for the purposes of the investigation, the person making it has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such investigation as if it were an inquiry under that Act. 1971, c. 50, s. 59 (4), *part*. Investigations on order of Minister

24.—(1) Where, upon a statement made under oath, the Director believes on reasonable and probable grounds that any person has, Investigations by Director

R.S.C. 1970,
c. C-34

- (a) contravened any of the provisions of this Act or the regulations;
- (b) committed an offence under the *Criminal Code* (Canada) or under the law of any jurisdiction that is relevant to his fitness for registration under this Act;
- (c) by any false, misleading or deceptive statement or advertisement, representation or promise, or by any dishonest concealment of material facts, induced or attempted to induce any person to borrow money or to be responsible for the repayment thereof or to agree to the terms of any transaction with respect to money lent on the security of a mortgage; or
- (d) induced or attempted to induce any person to pay or be responsible for the payment of excessive or exorbitant fees or expenses in connection with a loan on the security of a mortgage,

the Director may by order appoint one or more persons to make an investigation to ascertain whether such a contravention of the Act or regulation or the commission of such an offence or such conduct has occurred and the person appointed shall report the result of his investigation to the Director.

Powers of
investigator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the affairs of the person in respect of whom the investigation is being made and may,

- (a) upon production of his appointment, enter at any reasonable time the business premises of such person and examine books, papers, documents and things relevant to the subject-matter of the investigation; and
- (b) inquire into negotiations, transactions, loans, borrowings made by or on behalf of or in relation to such person and into property, assets or things owned, acquired or alienated in whole or in part by him or any person acting on his behalf that are relevant to the subject-matter of the investigation,

and for the purposes of the inquiry, the person making the investigation has the powers of a commission under

Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act. R.S.O. 1980, c. 411

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or conceal or destroy any books, papers, documents or things relevant to the subject-matter of the investigation. Obstruction of investigator

(4) Where a justice of the peace is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, papers, documents or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the justice of the peace may, whether or not an inspection has been made or attempted under clause (2) (a), issue an order authorizing the person making the investigation, together with such police officer or officers as he calls upon to assist him, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, papers, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation to make the search at night. Search warrant

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, papers, documents or things examined under clause (2) (a) or subsection (4) relating to the person whose affairs are being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, papers or documents, but such copying shall be carried out with reasonable dispatch and the books, papers or documents in question shall be promptly thereafter returned to the person whose affairs are being investigated. Removal of books, etc.

(6) Any copy made as provided in subsection (5) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, paper or document and its contents. Admissibility of copies

(7) The Minister or Director may appoint any expert to examine books, papers, documents or things examined under clause (2) (a) or under subsection (4). 1971, c. 50, s. 59 (4), *part*. Appointment of experts

Matters
confidential

25.—(1) Every person employed in the administration of this Act, including any person making an inquiry, inspection or an investigation under section 20, 21, 22, 23 or 24 shall preserve secrecy in respect of all matters that come to his knowledge in the course of his duties, employment, inquiry, inspection or investigation and shall not communicate any such matters to any other person except,

(a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations; or

(b) to his counsel; or

(c) with the consent of the person to whom the information relates.

Testimony
in civil suit

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceedings with regard to information obtained by him in the course of his duties, employment, inquiry, inspection or investigation except in a proceeding under this Act or the regulations. 1971, c. 50, s. 59 (4), *part.*

Order to
refrain from
dealing with
assets

26.—(1) Where,

(a) an investigation of any person has been ordered under section 24; or

(b) criminal proceedings or proceedings in relation to a contravention of any Act or regulation are about to be or have been instituted against a person that are connected with or arise out of the business in respect of which such person is registered,

the Director, if he believes it advisable for the protection of clients or customers of the person referred to in clause (a) or (b) may, in writing or by telegram, direct any person having on deposit or under control or for safekeeping any assets or trust funds of the person referred to in clause (a) or (b) to hold such assets or trust funds or direct the person referred to in clause (a) or (b) to refrain from withdrawing any such assets or trust funds from any person having any of them on deposit or under control or for safekeeping or to hold such assets or any trust funds of clients, customers or others in his possession or control in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the *Bankruptcy Act* (Canada), the *Judicature Act*, the *Corporations Act*, the *Business Corporations Act* or the *Winding-up Act* (Canada) or until the

Director revokes or the Tribunal cancels such direction or consents to the release of any particular assets or trust funds from the direction but, in the case of a bank, loan or trust company, the direction only applies to the office, branches or agencies thereof named in the direction. 1971, c. 50, s. 59 (5).

(2) Subsection (1) does not apply where the person referred to in clause (1) (a) or (b) files with the Director, ^{Bond in lieu}

(a) a personal bond accompanied by collateral security;

(b) a bond of a guarantee company approved under the *Guarantee Companies Securities Act*; or ^{R.S.O. 1980, c. 192}

(c) a bond of a guarantor, other than a guarantee company, accompanied by collateral security,

in such form, terms and amount as the Director may determine.

(3) Any person in receipt of a direction given under subsection (1) if in doubt as to the application of the direction to any assets or trust funds, or in case of a claim being made thereto by a person not named in the direction, may apply to a judge or local judge of the Supreme Court who may direct the disposition of such assets or trust funds and may make such order as to costs as seems just. ^{Application for direction}

(4) In any of the circumstances mentioned in clause (1) (a) or (b), the Director may in writing or by telegram notify any land registrar that proceedings are being or are about to be taken that may affect land belonging to the person referred to in the notice, and the notice shall be registered against the lands mentioned therein and has the same effect as the registration of a certificate of *lis pendens* except that the Director may in writing revoke or modify the notice. R.S.O. 1970, c. 278, s. 26 (2-4). ^{Notice to land registrar}

(5) Any person referred to in clause (1) (a) or (b) in respect of whom a direction has been given by the Director under subsection (1) or any person having an interest in land in respect of which a notice has been registered under subsection (4) may, at any time, apply to the Tribunal for cancellation in whole or in part of the direction or registration and the Tribunal shall dispose of the application after a hearing and may, if it finds that such a direction or registration is not required in whole or in part for the protection ^{Cancellation of direction or registration}

of clients or customers of the applicant or of other persons interested in the land or that the interests of other persons are unduly prejudiced thereby, cancel the direction or registration in whole or in part, and the applicant, the Director and such other persons as the Tribunal may specify are parties to the proceedings before the Tribunal. 1971, c. 50, s. 59 (6).

Notice of
changes

27.—(1) Every mortgage broker shall, within five days after the event, notify the Registrar in writing of,

(a) any change in his address for service;

(b) any change in the officers in the case of a corporation or of the members in the case of a partnership.

Idem

(2) The Registrar shall be deemed to be notified under subsection (1) on the day on which he is actually notified or, where the notification is by mail, on the day of mailing.

Financial
statements

(3) Every mortgage broker shall, when required by the Registrar with the approval of the Director, file a financial statement showing the matters specified by the Registrar and signed by the mortgage broker and certified by a person licensed under the *Public Accountancy Act*.

R.S.O. 1980,
c. 405

Statement
confidential

(4) The information contained in a financial statement filed under subsection (3) is confidential and no person shall otherwise than in the ordinary course of his duties communicate any such information or allow access to or inspection of the financial statement. R.S.O. 1970, c. 278, s. 27.

False
advertising

28. Where the Registrar believes on reasonable and probable grounds that a mortgage broker is making false, misleading or deceptive statements in any advertisement, circular, pamphlet or similar material, the Registrar may order the immediate cessation of the use of such material and section 7 applies with necessary modifications to the order in the same manner as to a proposal by the Registrar to refuse registration and the order of the Registrar shall take effect immediately, but the Tribunal may grant a stay until the Registrar's order becomes final. 1971, c. 50, s. 59 (7).

Service

29.—(1) Any notice or order required to be given or served under this Act or the regulations is sufficiently given or served if delivered personally or sent by registered mail addressed to the person to whom delivery or service is required to be made at the latest address for service

appearing on the records of the Ministry of Consumer and Commercial Relations. R.S.O. 1970, c. 278, s. 29 (1); 1972, c. 1, s. 45 (3).

(2) Where service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice or order until a later date. 1971, c. 50, s. 59 (8). Where service deemed to be made

(3) Notwithstanding subsections (1) and (2), the Tribunal may order any other method of service in respect of any matter before the Tribunal. R.S.O. 1970, c. 278, s. 29 (3). Exception

30.—(1) Where it appears to the Director that any person does not comply with any provision of this Act, the regulations or an order made under this Act, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights he may have, the Director may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application, the judge may make such order or such other order as the judge thinks fit. Restraining orders

(2) An appeal lies to the Divisional Court from an order made under subsection (1). R.S.O. 1970, c. 278, s. 30. Appeal

31.—(1) Every person who, knowingly, Offences

- (a) furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations;
- (b) fails to comply with any order, direction or other requirement made under this Act; or
- (c) contravenes any provision of this Act or the regulations,

and every director or officer of a corporation who knowingly concurs in such furnishing, failure or contravention is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

(2) Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein. Corporations

Consent of
Minister

(3) No proceedings under this section shall be instituted except with the consent of the Minister.

Limitation

(4) No proceeding under clause (1) (a) shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Director.

Idem

(5) No proceeding under clause (1) (b) or (c) shall be commenced more than two years after the time when the subject-matter of the proceeding arose. R.S.O. 1970, c. 278, s. 31.

Certificate
as evidence

32. A statement as to,

- (a) the registration or non-registration of any person ;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar ;
- (c) the time when the facts upon which proceedings are based first came to the knowledge of the Director ;
or
- (d) any other matter pertaining to such registration, non-registration, filing or non-filing,

purporting to be certified by the Director is, without proof of the office or signature of the Director, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution. R.S.O. 1970, c. 278, s. 32 ; 1971, c. 50, s. 59 (9).

Regulations

33. The Lieutenant Governor in Council may make regulations,

- (a) exempting persons or classes of persons from this Act or the regulations or any provision thereof in addition to those exempted under section 2 ;
- (b) governing applications for registration or renewal of registration and prescribing terms and conditions of registration ;
- (c) requiring the payment of fees on application for registration or renewal of registration and prescribing the amount thereof ;
- (d) prescribing forms for the purposes of this Act and providing for their use ;

- (*e*) requiring and governing the maintenance of trust accounts by mortgage brokers and prescribing the moneys that shall be held in trust and the terms and conditions thereof;
- (*f*) requiring and governing the books, accounts and records that shall be kept by mortgage brokers;
- (*g*) prescribing the information that mortgage brokers shall furnish to borrowers;
- (*h*) requiring mortgage brokers to make returns and furnish information to the Registrar;
- (*i*) requiring any information required to be furnished or contained in any form or return to be verified by affidavit;
- (*j*) prescribing further procedures respecting the conduct of matters coming before the Tribunal;
- (*k*) providing for the responsibility for payment of witness fees and expenses in connection with proceedings before the Tribunal and prescribing the amounts thereof;
- (*l*) prescribing the fees payable upon the filing of a prospectus;
- (*m*) prescribing the information required to be contained in a prospectus. R.S.O. 1970, c. 278, s. 33; 1973, c. 103, s. 4; 1975, c. 28, s. 3.

CHAPTER 296

Mortgages Act

1. In this Act,

Interpre-
tation

- (a) “conveyance” includes assignment, appointment, lease, settlement and other assurance and covenant to surrender made by deed on a sale, mortgage, demise or settlement of any property or on any other dealing with or for any property; and “convey” has a corresponding meaning;
- (b) “encumbrance” includes a mortgage in fee or for a less estate, a trust for securing money, a lien, and a charge of a portion, annuity or other capital or annual sum; and “encumbrancer” has a corresponding meaning, and includes every person entitled to the benefit of an encumbrance, or to require payment or discharge thereof;
- (c) “land” includes tenements and hereditaments, corporeal or incorporeal, houses and other buildings, and also an undivided share in land;
- (d) “mortgage” includes any charge on any property for securing money or money’s worth; “mortgage money” means money or money’s worth secured by a mortgage; “mortgagor” includes any person deriving title under the original mortgagor or entitled to redeem a mortgage, according to his estate, interest or right in the mortgaged property; and “mortgagee” includes any person deriving title under the original mortgagee.
R.S.O. 1970, c. 279, s. 1.

PART I

RIGHTS AND OBLIGATIONS OF MORTGAGORS AND MORTGAGEES

2.—(1) Notwithstanding any stipulation to the contrary where a mortgagor is entitled to redeem he may require the mortgagee, instead of giving a certificate of payment or reconveying and on the terms on which he would be bound to reconvey, to assign the mortgage debt and convey the mortgaged property to any third person as the mortgagor directs, and the mortgagee is bound to assign and convey accordingly.

Obligation
on mortgagee
to transfer
instead of
reconveying

Idem

(2) The right of the mortgagor to require an assignment belongs to and is capable of being enforced by each encumbrancer or by the mortgagor, notwithstanding any intermediate encumbrance; but a requisition of an encumbrancer prevails over that of the mortgagor, and as between encumbrancers a requisition of a prior encumbrancer prevails over that of a subsequent encumbrancer.

Exception

(3) This section does not apply if the mortgagee is or has been in possession. R.S.O. 1970, c. 279, s. 2.

Right of mortgagor to inspect title deeds

3. Notwithstanding any stipulation to the contrary a mortgagor, as long as his right to redeem subsists, is entitled, at reasonable times, on his request, and at his own cost and on payment of the mortgagee's costs and expenses in that behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee. R.S.O. 1970, c. 279, s. 3.

Right of mortgagor to copy of mortgage

4.—(1) Notwithstanding any stipulation to the contrary, within thirty days after receipt by the mortgagee of a mortgage executed by the mortgagor, the mortgagee or his solicitor or representative shall deliver or mail or cause to be delivered or mailed a true copy of the mortgage to the mortgagor or his solicitor or representative.

Offence

(2) If the mortgagee or his solicitor or representative fails to deliver or mail or cause to be delivered or mailed a true copy of the mortgage to the mortgagor or his solicitor or representative within thirty days after receipt by the mortgagee of the mortgage executed by the mortgagor as required by subsection (1), the mortgagor may, within ten days after the period of thirty days has elapsed, demand from the mortgagee a true copy of the mortgage, and, if the mortgagee fails to comply with the demand within ten days after receipt of the demand by him, he is guilty of an offence and on conviction is liable to a fine of not more than \$50. R.S.O. 1970, c. 279, s. 4.

Action for possession of land by mortgagor

5. A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter into receipt of the rents and profits thereof has been given by the mortgagee, may sue for such possession, or sue or distrain for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person, and in that case he may sue or distrain jointly with such other person. R.S.O. 1970, c. 279, s. 5.

6.—(1) All money payable to a mortgagor on an insurance of the mortgaged property, including effects, whether affixed to the freehold or not, being or forming part thereof, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received. Application of insurance money

(2) Without prejudice to any obligation to the contrary Idem imposed by law or by special contract, a mortgagee may require that all money received on an insurance of the mortgaged property be applied in or towards the discharge of the money due under his mortgage. R.S.O. 1970, c. 279, s. 6.

7. There shall, in the several cases mentioned in this section, be deemed to be included, and there shall in those several cases be implied, covenants to the effect stated in this section, by the person or by each person who conveys, as far as regards the subject-matter or share thereof expressed to be conveyed by him with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common, that is to say, Covenants to be implied:

(a) in a conveyance by way of mortgage, the following covenants by the person who conveys, and is on mortgage by beneficial owner expressed to convey as beneficial owner, namely,

- (i) for payment of the mortgage money and interest, and observance in other respects of the proviso in the mortgage,
- (ii) for good title,
- (iii) for right to convey,
- (iv) that, on default, the mortgagee shall have quiet possession of the land, free from all encumbrances,
- (v) that the mortgagor will execute such further assurances of the said lands as may be requisite, and
- (vi) that the mortgagor has done no act to encumber the land mortgaged,

according to the forms of covenants for such purposes set forth in Schedule B to the *Short Forms of Mortgages Act*, subject to the provisions of that Act; R.S.O. 1980, c. 474

on mortgage
of leaseholds,
by beneficial
owner

(b) in a conveyance by way of mortgage of leasehold property, the following further covenants by the person who conveys and is expressed to convey, as beneficial owner, namely,

- (i) that the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid and effectual lease or grant of the land conveyed, and is in full force, unforfeited, and unsundered, and in no wise become void or voidable, and that all the rents reserved by, and all the covenants, conditions and agreements contained in the lease or grant and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed up to the time of conveyance, and
- (ii) that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains on the security of the conveyance, pay, observe and perform, or cause to be paid, observed and performed, all the rents reserved by, and all the covenants, conditions and agreements contained in the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed and performed, and will keep the person to whom the conveyance is made and those deriving title under him indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent, or the non-observance or non-performance of such covenants, conditions and agreements, or any of them. R.S.O. 1970, c. 279, s. 7.

Implied
covenants in
mortgages
are joint
and several

8. In a mortgage, where more persons than one are expressed to convey as mortgagors, or to join as covenantors, the implied covenants on their part shall be deemed to be joint and several covenants by them, and where there are more mortgagees than one the implied covenant with them shall be deemed to be a covenant with them jointly unless the amount is expressed to be secured to them in shares or distinct sums, in which latter case the implied

covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him. R.S.O. 1970, c. 279, s. 8.

9.—(1) A mortgagee of freehold or leasehold property may take and receive from the mortgagor a release of the equity of redemption in the property, or may purchase the same under any judgment or decree or execution without thereby merging the mortgage debt as against any subsequent mortgagee or person having a charge on the same property. Release of equity of redemption without merger of debt

(2) Where a prior mortgagee so acquires the equity of redemption of the mortgagor no subsequent mortgagee is entitled to foreclose or sell the property without redeeming or selling, subject to the rights of such prior mortgagee, in the same manner as if such prior mortgagee had not acquired the equity of redemption. Position of subsequent mortgagee

(3) This section does not affect any priority or claim any mortgagee may have under the registry laws. R.S.O. 1970, c. 279, s. 9. Priority under registry

10. Where a person entitled to any freehold land by way of mortgage has died, and his executor or administrator has become entitled to the money secured by the mortgage, or has assented to a bequest thereof, or has assigned the mortgage debt, such executor or administrator, if the mortgage money was paid to the testator or intestate in his lifetime, or on payment of the principal money and interest due on the mortgage, or on receipt of the consideration money for the assignment, may convey, assign, release or discharge the mortgage debt and the mortgagee's estate in the land, and such executor or administrator has the same power as to any part of the land on payment of some part of the mortgage debt, or on any arrangement for exonerating the whole or any part of the mortgaged land, without payment of money, and such conveyance, assignment, release or discharge is as effectual as if the same had been made by the persons having the mortgagee's estate. R.S.O. 1970, c. 279, s. 10. Powers of executors of mortgagee

11.—(1) In this section, "court" means the Supreme Court or the county or district court of the county or district in which the land or any part thereof is situate. Interpretation

(2) The payment in good faith of any money to and the receipt thereof by the survivor or survivors of two or more mortgagees, or the executors or administrators of such survivor, or their or his assigns, effectually discharges the Effect of receipts of surviving mortgagee, etc.

person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the security.

Where mortgagee cannot be found

(3) When a mortgagor or any person entitled to pay off a mortgage desires to do so and the mortgagee, or one of several mortgagees, cannot be found or when a sole mortgagee or the last surviving mortgagee is dead and no probate of his will has been granted or letters of administration issued, or where from any other cause a proper discharge cannot be obtained, or cannot be obtained without undue delay, the court may permit payment into court of the amount due upon the mortgage and may make an order discharging the mortgage.

Payment out of money paid into court

(4) The money paid into court shall be paid out of court with any accrued interest to the mortgagee or mortgagees or to the executor or administrator of the mortgagee or as the court by order for payment into court or any subsequent order may direct.

Notice to mortgagee

(5) The court may require notice to be given by advertisement or as may be considered proper to the mortgagee or those claiming under him either before or after making the order.

When amount offered questioned

(6) When the amount admitted to be due upon the mortgage appears to be open to question the court may as a condition of making the order require payment into court of a sum in excess of the amount admitted to be due and in such case the additional sum is subject to the further order of the court.

Provision for subsequent interest and costs

(7) The court may require payment into court of an additional sum to answer any claim by the mortgagee for subsequent interest and costs.

Death of mortgagee, order for discharge

(8) When a mortgagee has died and all money due upon the mortgage was paid to him in his lifetime or has been paid to a person entitled to receive the same after his death or where in any other case it appears that all money due upon the mortgage has been paid and for any reason a discharge or reconveyance cannot be obtained without undue delay and expense the court may make an order discharging the mortgage.

Registration of order discharging

(9) Upon the registration of an order discharging a mortgage it has the same effect as the registration of a certificate of discharge signed by the mortgagee would have under the *Registry Act*.

(10) An appeal lies to the Court of Appeal from any order made under this section. R.S.O. 1970, c. 279, s. 11. Appeal

12. The purchaser in good faith of a mortgage may, to the extent of the mortgage, and except as against the mortgagor, set up the defence of purchase for value without notice in the same manner as a purchaser of the mortgaged property might do. R.S.O. 1970, c. 279, s. 12. Defence of purchase for value without notice

13. Notwithstanding any stipulation in the mortgage to the contrary, the right of a mortgagee to distrain for interest in arrear upon a mortgage is limited to the goods and chattels of the mortgagor, and to such of them as are not exempt from seizure under execution. R.S.O. 1970, c. 279, s. 13. Exemption from liability to distress

14.—(1) As against creditors of a mortgagor, or person in possession of mortgaged premises under a mortgage, the right, if any, to distrain upon the mortgaged premises for arrears of interest or for rent, in the nature of or in lieu of interest under the provisions of any mortgage is restricted to one year's arrears of such interest or rent. Limitation upon right to distrain

(2) This restriction does not apply unless some one of such creditors is an execution creditor, or unless there is an assignee for the general benefit of such creditors appointed before lawful sale of the goods and chattels distrained, nor unless the officer executing such writ of execution or such assignee, by notice in writing to be given to the person distraining or his attorney, bailiff, or agent before such lawful sale, claims the benefit of this restriction. When restriction to apply

(3) When such notice is given, the distrainor shall relinquish to the officer or assignee the goods and chattels so distrained, upon receiving one year's arrears of such interest or rent and his reasonable costs of distress, or if such arrears and costs are not paid or tendered he shall sell only so much of the goods and chattels distrained as is necessary to satisfy one year's arrears of such interest or rent and the reasonable costs of distress and sale, and shall thereupon relinquish any residue of them, and pay any residue of money, proceeds thereof so distrained, to such officer or assignee. Duty of distrainor when restriction applies

(4) An officer executing an execution, or an assignee who pays any money to relieve goods and chattels from distress under this section, is entitled to reimburse himself therefor out of the proceeds of the sale thereof. R.S.O. 1970, c. 279, s. 14. Reimbursement of officer or assignee

15. Goods and chattels distrained by a mortgagee shall not be sold except after such public notice as is required to be given by a landlord who sells goods and chattels distrained for rent. R.S.O. 1970, c. 279, s. 15. Notice of sale

Payment
of principal
upon default

16.—(1) Notwithstanding any agreement to the contrary, where default has been made in the payment of any principal money secured by a mortgage of freehold or leasehold property, the mortgagor or person entitled to make such payment may at any time, upon payment of three months interest on the principal money so in arrear, pay the same, or he may give the mortgagee at least three months notice, in writing, of his intention to make such payment at a time named in the notice, and in the event of his making such payment on the day so named he is entitled to make the same without any further payment of interest except to the date of payment.

Exception

(2) If the mortgagor or person entitled to make such payment fails to make the same at the time mentioned in the notice, he is thereafter entitled to make such payment only on paying the principal money so in arrear and interest thereon to the date of payment together with three months interest in advance.

Saving

(3) Nothing in this section affects or limits the right of the mortgagee to recover by action or otherwise the principal money so in arrear after default has been made. R.S.O. 1970, c. 279, s. 16.

Right to
redeem
after 5 years

17.—(1) Where any principal money or interest secured by a mortgage of freehold or leasehold property is not, under the terms of the mortgage, payable until a time more than five years after the date of the mortgage, then, if at any time after the expiration of such five years any person liable to pay or entitled to redeem tenders or pays to the person entitled to receive the money the amount due for principal money and interest to the time of such tender or payment, together with three months further interest in lieu of notice, no further interest is chargeable, payable or recoverable at any time thereafter on the principal money or interest due under the mortgage.

Exceptions

(2) This section does not apply to any mortgage given by a joint stock company or other corporation nor to any debenture issued by any such company or corporation for the payment of which security has been given on freehold or leasehold property. R.S.O. 1970, c. 279, s. 17.

Paying off
mortgage
when pro-
vision made
for a lower
rate for
punctual
payment

18.—(1) Where provision is made in a mortgage that if interest is paid promptly it will be accepted at a lower rate than that provided in the mortgage, and interest at the lower rate has been paid according to such condition up to the time when all the principal money has become payable, any person liable to pay or entitled to redeem is entitled to pay the principal

money and interest on the same at the lower rate at any time after the time for payment of the principal money on giving three months notice of his intention to make such payment or on paying three months interest at such lower rate in lieu of notice.

(2) If the mortgagor or person entitled to make such payment fails to make the same at the time mentioned in the notice, he is thereafter entitled to make such payment only on paying the principal and interest at the lower rate to the date of payment, together with three months interest in advance. R.S.O. 1970, c. 279, s. 18.

Mortgagor
failing to pay
according to
notice

19.—(1) In this section, “original mortgagor” means any person who by virtue of privity of contract with the mortgagee is personally liable to the mortgagee to pay the whole or any part of the moneys secured by the mortgage.

Interpre-
tation

(2) Notwithstanding any stipulation to the contrary in a mortgage, where a mortgagor has conveyed and transferred the equity of redemption to a grantee under such circumstances that the grantee is by express covenant or otherwise obligated to indemnify the mortgagor with respect to the mortgage, the mortgagee has the right to recover from the grantee the amount of the mortgage debt in respect of which the grantee is obligated to indemnify the mortgagor; provided that the right of the mortgagee to recover the amount of the mortgage debt under this section from the grantee of the equity of redemption shall as against such grantee terminate on the registration of a grant or transfer of the equity of redemption by such grantee to another person unless prior to such registration an action has been commenced to enforce the right of the mortgagee.

Right of
mortgagee
to recover
personal
judgment

(3) Where a mortgagee has the right to recover the whole or any part of moneys secured by a mortgage from an original mortgagor and also has a right by virtue of this section to recover from a grantee of the equity of redemption from a mortgagor, if the mortgagee recovers judgment for the amount of the mortgage debt against the original mortgagor, the mortgagee thereupon forever ceases to have a right to recover under this section from a grantee, and if the mortgagee recovers judgment under this section against a grantee he thereupon forever ceases to have a right to recover from the original mortgagor; provided that where there is more than one original mortgagor this section does not affect the right of a mortgagee after the recovery of judgment against one original mortgagor to recover judgment against the other original mortgagor or mortgagors. R.S.O. 1970, c. 279, s. 19.

Limit of
right of
action

Interpre-
tation

20.—(1) In this section, “building mortgage” means any mortgage made for the purpose of financing the construction of a building.

When no
action may
be brought

(2) Where, in any building mortgage made on or after the 1st day of July, 1942, it is expressly stated that it is a building mortgage made pursuant to this section, no action may be brought by the mortgagee after the expiration of one year from the date of the maturity of the mortgage whereby to recover payment from the person who executed the mortgage of the whole or any part of the moneys therein secured, if such person has made a *bona fide* sale of the property and has conveyed and transferred the equity of redemption to a grantee under such circumstances that the grantee is by express covenant or otherwise obligated to indemnify such person with respect to the mortgage. R.S.O. 1970, c. 279, s. 20.

Relief
before
action

21.—(1) Notwithstanding any agreement to the contrary, where default has occurred in making any payment of principal or interest due under a mortgage or in the observance of any covenant in a mortgage and under the terms of the mortgage, by reason of such default, the whole principal and interest secured thereby has become due and payable,

(a) at any time before sale under the mortgage; or

(b) before the commencement of an action for the enforcement of the rights of the mortgagee or of any person claiming through or under him,

the mortgagor may perform such covenant or pay the amount due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, and pay any expenses necessarily incurred by the mortgagee, and thereupon he is relieved from the consequences of such default.

Statement
of arrears,
expenses,
etc.

(2) The mortgagor may, by a notice in writing, require the mortgagee to furnish him with a statement in writing,

(a) of the amount of the principal or interest with respect to which the mortgagor is in default; or

(b) of the nature of the default or the non-observance of the covenant,

and of the amount of any expenses necessarily incurred by the mortgagee.

(3) The mortgagee shall answer a notice given under subsection (2) within fifteen days after he receives it, and, if without reasonable excuse he fails so to do or his answer is incomplete or incorrect, any rights that he may have to enforce the mortgage shall be suspended until he has complied with subsection (2). R.S.O. 1970, c. 279, s. 21. Idem

22.—(1) Notwithstanding any agreement to the contrary, where default has occurred in making any payment of principal or interest due under a mortgage or in the observance of any covenant in a mortgage and under the terms of the mortgage, by reason of such default, the whole principal and interest secured thereby has become due and payable, in an action for enforcement of the rights of the mortgagee or of any person claiming through or under him, the mortgagor, upon payment into court of the sum of \$100 to the credit of the action as security for costs, may apply to the court and, conditional upon performance of such covenant or upon payment of the money due under the mortgage, exclusive of the money not payable by reason merely of lapse of time, and upon payment of the costs of the action, the court, Relief after action commenced

(a) shall dismiss the action if judgment has not been recovered; or

(b) may stay proceedings in the action, if judgment has been recovered and if no sale or recovery of possession of the land or final foreclosure of the equity of redemption has taken place.

(2) Notwithstanding clause (1) (b), where judgment has been recovered and recovery of possession of the land has taken place, the court may stay proceedings in the action upon the application of a person added as a party in the master's office, made under subsection (1) within ten days after service of notice of the judgment has been made upon him. Idem

(3) Where proceedings have been stayed under clause (1) (b) or under subsection (2) and default again occurs under the mortgage, the court upon application may remove the stay. R.S.O. 1970, c. 279, s. 22. Subsequent default

PART II

STATUTORY POWERS

23. Where any principal money is secured by mortgage of land, the mortgagee, at any time after the expiration of three months from the time of default in the payment of any Powers incident to mortgages after default

moneys due under the mortgage or after any omission to pay any premium of insurance that by the terms of the mortgage ought to be paid by the mortgagor, has the following powers to the like extent as if they had been in terms conferred by the mortgage:

Power of
sale

1. A power to sell, or to concur with any other person in selling, the whole or any part of the mortgaged property by public auction or private contract, subject to any reasonable conditions he may think fit to make, and to buy in at an auction and to rescind or vary contracts for sale, and to resell the land, from time to time, in like manner without being answerable for any loss occasioned thereby.

Power to
insure

2. A power to insure and to keep insured against loss or damage by fire any building or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the mortgaged property, and the premiums paid for any such insurance are a charge on the mortgaged property, in addition to the mortgage money and with the same priority and with interest at the same rate as the mortgage money. R.S.O. 1970, c. 279, s. 23.

Receipts for
purchase
money
sufficient
discharges

- 24.** A receipt for purchase money given by the person exercising the power of sale conferred by section 23 is a sufficient discharge to the purchaser, who is not bound to see to the application of the purchase money. R.S.O. 1970, c. 279, s. 24.

Notice
before sale

- 25.—**(1) No sale under the power conferred by section 23 shall be made until after forty-five days notice in writing in Form 1 has been given to the persons and in the manner provided by Part III.

Idem

- (2) The notice may be given at any time after fifteen days default in making any payment provided for by the mortgage. R.S.O. 1970, c. 279, s. 25.

Application
of purchase
money

- 26.** The money arising from the sale shall be applied by the person receiving the same as follows:

Firstly, in payment of all the expenses incident to the sale or incurred in any attempted sale;

Secondly, in discharge of all interest and costs then due in respect of the mortgage under which the sale was made;

Thirdly, in discharge of all the principal money then due in respect of the mortgage; and

Fourthly, in payment of the amounts due to the subsequent encumbrancers according to their priorities,

and the residue shall be paid to the mortgagor. R.S.O. 1970, c. 279, s. 26.

27. The person exercising the power of sale has power to convey or assign to and vest in the purchaser the property sold for all the estate and interest therein of the mortgagor and of which he had power to dispose. R.S.O. 1970, c. 279, s. 27.

Conveyance
to the
purchaser

28. At any time after the power of sale has become exercisable, the person entitled to exercise the same is entitled to demand and recover from the mortgagor all deeds and documents in his possession or power relating to the mortgaged property, or to the title thereto, which he would have been entitled to demand and recover if the property had been conveyed, appointed, surrendered or assigned to and was then vested in him for all the estate and interest of the mortgagor and of which he had power to dispose, and where the legal estate is outstanding in a trustee the mortgagee, or any purchaser from him, is entitled to call for a conveyance of the legal estate to the same extent as the mortgagor could have called for such a conveyance if the mortgage had not been made. R.S.O. 1970, c. 279, s. 28.

Right to title
deeds and
conveyance
of legal
estate

29. So much of this Part as confers a power to sell does not apply in the case of a mortgage that contains a power of sale, and so much as confers a power to insure does not apply in the case of a mortgage that contains a power to insure; nor do any of the provisions of this Part apply to a mortgage that contains a declaration that this Part does not apply thereto. R.S.O. 1970, c. 279, s. 29.

Application
of Part II

PART III

NOTICE OF EXERCISING POWER OF SALE

30.—(1) A mortgagee shall not exercise a power of sale unless a notice of exercising the power of sale in Form 1 has been given by him to the following persons, other than the persons having an interest in the mortgaged property prior to that of the mortgagee and any other persons subject to whose rights the mortgagee proposes to sell the mortgaged property:

Notice of
power of
sale

R.S.O. 1980,
c. 230

1. Where the mortgaged property is registered under the *Land Titles Act*, to every person appearing by the register of title and by the index of executions to have an interest in the mortgaged property.

R.S.O. 1980,
c. 445

2. Where the *Registry Act* applies to the mortgaged property, to every person appearing by the abstract index and by the index of writs received for execution by the sheriff of the county or district in which the mortgaged property is situate to have an interest in the mortgaged property.
3. Where there is a statutory lien against the mortgaged property in favour of the Crown or any other public authority and where the mortgagee exercising the power of sale has written notice of the lien, to the Crown or other public authority claiming the lien.
4. Where the mortgagee has actual notice in writing of any other interest in the mortgaged property and where such notice has been received prior to the giving of notice exercising the power of sale, to the person having such interest.

Interpre-
tation

(2) In subsection (1), the expressions “register of title” and “abstract index” include instruments received for registration before 4.30 p.m. on the day immediately prior to the day on which a notice of exercising the power of sale is given. R.S.O. 1970, c. 279, s. 30.

When notice
may be
given and
power
exercised

31. Where a mortgage by its terms confers a power of sale upon a certain default, notice of exercising the power of sale shall not be given until the default has continued for at least fifteen days, and the sale shall not be made for at least thirty-five days after the notice has been given. R.S.O. 1970, c. 279, s. 31.

Manner
of giving
notice,
general
rules

32.—(1) A notice of exercising a power of sale shall be given by personal service or by registered mail addressed to the person to whom it is to be given at his usual or last known place of address, or, where the last known place of address is that shown on the registered instrument under which he acquired his interest, to such address, or by leaving it at one of such places of address, or, where the mortgage provides for personal service only, by personal service, or, where the mortgage provides a specific address, to such address.

Execution
creditors

(2) Where a person to be given a notice of exercising a power of sale is an execution creditor, the notice may

be given in the manner provided in subsection (1) by addressing it to the solicitor who issued the execution or, where there is no solicitor, to the execution creditor.

(3) Where a person to be given a notice of exercising a power of sale is a mechanics' lien claimant, the notice may be given in the manner provided in subsection (1) by addressing it to the solicitor who filed the claim for lien, but, where there is no solicitor and no address for service is shown on the claim for lien and the mortgagee has no actual knowledge of the lien claimant's address, no notice need be given to such lien claimant. Mechanics' lien creditors

(4) Where a person to be given a notice of exercising a power of sale is under a disability, the notice shall be deemed to have been effectually given if given in accordance with subsection (1). Persons under disability

(5) Where a person to be given a notice of exercising a power of sale has died, the notice shall be deemed to have been effectually given if given by registered mail in accordance with subsection (1), and, subject to paragraph 4 of subsection 30 (1), shall be deemed to be effectual notice to all persons who have any interest in the deceased's estate. R.S.O. 1970, c. 279, s. 32. Deceased persons

33. A notice of exercising a power of sale shall, if given by registered mail, be mailed in Ontario, and such a notice shall be deemed to have been given on the day on which it was mailed. R.S.O. 1970, c. 279, s. 33. When notice by mail effective

34. Subject to the *Land Titles Act* and except where an order is made under section 38, a statutory declaration by the mortgagee, his solicitor or agent as to default, a statutory declaration proving service, including production of the post office receipt of registration, if any, and a statutory declaration by the mortgagee or his solicitor that the sale complies with this Part and, where applicable, with Part II, is conclusive evidence of compliance with this Part and, where applicable, with Part II, sufficient to give a good title to the purchaser. R.S.O. 1970, c. 279, s. 34. Statutory declarations conclusive R.S.O. 1980, c. 230

35. Where a notice has been given in professed compliance with this Part and, where applicable, with Part II, the title of the purchaser is not liable to be impeached on the ground that the provisions of this Part or, where applicable, Part II respecting default and the provisions of this Part respecting notice, have not been complied with, Impeachment of title

but any person damnified thereby has his remedy against the person exercising the power of sale. R.S.O. 1970, c. 279, s. 35.

Abridge-
ment of
time

36. Nothing in this Part shall be deemed to abridge,

- (a) the period of default after which notice exercising a power of sale may be given where the period of default provided by the mortgage is greater than the period of default mentioned in section 31; or
- (b) the period of time after notice has been given after which the mortgaged premises may be sold where the period of time provided by the mortgage is greater than the period of time mentioned in section 31. R.S.O. 1970, c. 279, s. 36.

Notice
rules
paramount

37. Notwithstanding any agreement to the contrary or any provision contained in any mortgage or any provision of this or any other Act, sections 30, 31, 32, 33, 34 and 35 apply to any power of sale in a mortgage, and sections 30, 32, 33, 34 and 35 apply to the power of sale conferred by section 23. R.S.O. 1970, c. 279, s. 37.

Exercise of
power of
sale without
notice

38.—(1) Where a mortgage by its terms confers a power of sale upon a certain default and such default has continued for fifteen days, or where there has been at least three months default under a mortgage with respect to which a power of sale is conferred by section 23, a mortgagee may apply *ex parte* to the judge of the county or district court of the county or district in which the mortgaged property or any part thereof is situate, or to the Master of the Supreme Court, for leave to exercise power of sale without notice.

Idem

(2) Upon an application under subsection (1), the judge or master, as the case may be, shall, having regard to the circumstances, either grant leave to exercise the power of sale without notice or with such notice to such persons, in such manner and within such time as he considers proper. R.S.O. 1970, c. 279, s. 38.

Part III
does not
apply to
bond
mortgages

39. This Part does not apply to a mortgage given by a corporation to secure bonds or debentures. R.S.O. 1970, c. 279, s. 39.

PART IV

GENERAL PROVISIONS AS TO POWER OF SALE

40.—(1) Where, pursuant to any condition or proviso contained in a mortgage, there has been made or given a demand or notice either requiring payment of the money secured by the mortgage, or any part thereof, or declaring an intention to proceed under and exercise the power of sale therein contained, no further proceeding and no action either to enforce the mortgage, or with respect to any clause, covenant or provision therein contained, or to the mortgaged property or any part thereof, shall, until after the lapse of the time at or after which, according to such demand or notice, payment of the money is to be made or the power of sale is to be exercised or proceeded under, be commenced or taken until an order permitting the same has been obtained from a judge of the county or district court of the county or district in which the mortgaged property or any part thereof is situate, or from a judge of the Supreme Court.

Restrictions
as to pro-
ceedings

(2) The order may be obtained *ex parte* or upon such notice as the judge may direct upon such proof as satisfies the judge that it is reasonable and equitable that the proposed action or proceeding should be permitted.

Proof on
which order
may be
granted

(3) This section does not apply to proceedings to stay waste or other injury to the mortgaged property. R.S.O. 1970, c. 279, s. 40.

Exception

41.—(1) Where such demand or notice requires payment of all money secured by or under a mortgage, the person making such demand or giving such notice is bound to accept and receive payment of the same if made as required by the terms of such demand or notice.

Payment
made in
terms of
notice

(2) If there is a dispute as to the costs payable by the person by or on whose behalf such payment is either made or tendered, such costs shall, on three clear days notice to such person by the person claiming the same, be taxed and ascertained by the clerk of the county or district court, or by the local master of the county or district in which the mortgaged property or any part thereof is situate.

Payment or
tender of
costs

(3) Where the time limited by the demand or notice requiring payment expires before the taxation of the costs has been completed, the amount due apart from the costs claimed may be paid, and payment of the amount

Compliance
with
demand

allowed for costs within ten days after the issue of a certificate of taxation shall be deemed a compliance with the demand or notice.

Costs,
taxation

(4) A mortgagee's costs of and incidental to the exercise of a power of sale, whether under this Part or otherwise, may, without an order, be taxed by one of the taxing officers of the Supreme Court at Toronto or by a local master having jurisdiction in the county or district in which the mortgaged property or any part of it is situate at the instance of any person interested.

Discretion
as to costs

(5) The costs of the taxation shall be in the discretion of the taxing officer. R.S.O. 1970, c. 279, s. 41.

FORM 1

(Sections 25 (1) and 30 (1))

NOTICE OF SALE UNDER MORTGAGE

Take notice that default has been made in payment of the moneys due under a certain mortgage dated the.....day of....., 19..., made between *(here state parties and describe mortgaged property)* which mortgage was registered on the.....day of....., 19..., in the registry division, etc. *(and, if the mortgage has been assigned, add: and which mortgage was assigned to the undersigned on the..... day of....., 19...)*.

And I hereby give you notice that the amount now due on the mortgage for principal money, interest *(if so, add: taxes, insurance premiums, or other matters)* and costs, respectively, are as follows:

(Set out items claimed to be due)

And unless the said sums are paid on or before the..... day of....., 19... *(a day not less than forty-five days from the service of the notice where the power of sale is exercised under Part II, or a day not less than thirty-five days from the service of the notice where Part III applies)*, I shall sell the property covered by the said mortgage under the provisions contained in it *(or if so: under Part II of the Mortgages Act)*.

This notice is given to you as you appear to have an interest in the mortgaged property and may be entitled to redeem the same.

Dated the.....day of....., 19...

(Signed)
Mortgagee

R.S.O. 1970, c. 279, Form 1.

CHAPTER 297

Mortmain and Charitable Uses Act

1.—(1) In this Act,

Interpre-
tation

- (a) “assurance” includes a gift, conveyance, appointment, lease, transfer, settlement, mortgage, charge, encumbrance, devise, bequest and every other assurance by deed, will or other instrument, and “assure” and “assuror” have a corresponding meaning;
- (b) “full and valuable consideration” includes such a consideration either actually paid upon or before the making of the assurance, or reserved or made payable to the vendor or any other person by way of rent, rent charge, or other annual payment, in perpetuity, or for any term of years, or other period, with or without a right of re-entry for non-payment thereof, or partly paid and partly reserved, as aforesaid;
- (c) “land” includes tenements and hereditaments corporeal and incorporeal of whatever tenure, but not money secured on land, or other personal estate arising from or connected with land;
- (d) “Minister” means the member of the Executive Council to whom the administration of this Act is assigned by the Lieutenant Governor in Council;
- (e) “will” includes codicil.

(2) The following shall be deemed to be charitable uses <sup>Charitable
uses</sup> within the meaning of this Act,

- (a) the relief of poverty;
- (b) education;
- (c) the advancement of religion; and
- (d) any purpose beneficial to the community, not falling under the foregoing heads. R.S.O. 1970, c. 280, s. 1.

MORTMAIN

Prohibition
against
mortmain

2.—(1) Land shall not be assured to or for the benefit of or acquired or held by or on behalf of any corporation in mortmain otherwise than under the authority of a licence or of a statute for the time being in force.

Forfeiture

(2) Where land is assured, acquired or held contrary to subsection (1), it shall be forfeited to the Crown upon the expiration of at least six months after notice in writing is given to the corporation of the intention of the Crown to claim the land and upon the Crown registering in the proper land registry office a similar notice against the land.

Effect of
registration
of notice

(3) Upon the registration of such notice against the land, it shall be deemed to be a charge against the land.

Release or
vacation

(4) Such a charge may be released or vacated at any time upon the registration in the proper land registry office of a release or cessation, as the case may be, of the charge.

Right of
disposal

(5) The corporation may dispose of the land free from and clear of any forfeiture or any liability to forfeiture under this section until the expiration of the six months period mentioned in subsection (2) and until the notice mentioned in subsection (2) is registered against the land.

Application
of subss. (2-5)

(6) Subsections (2) to (5) apply to land that was before the 30th day of April, 1954, assured to or for the benefit of or acquired or held by or on behalf of any corporation in mortmain otherwise than under the authority of a licence or of a statute for the time being in force, except where the Crown has entered on and held the land before that date, and to land so assured, acquired or held on or after that date. R.S.O. 1970, c. 280, s. 2, *amended*.

Saving for
rents and
services

3. No forfeiture to the Crown under section 2 merges or extinguishes or otherwise affects any rent or service that may be due to the Crown in respect of any land. R.S.O. 1970, c. 280, s. 3.

Power to
issue
licences in
mortmain

4.—(1) The Lieutenant Governor may in his discretion issue to any person or corporation a licence in such form as he thinks fit to assure land in mortmain in perpetuity or otherwise, and may in his discretion issue to any corporation a licence to acquire land in mortmain, and to hold such land in perpetuity or otherwise.

Powers of
Minister

(2) The Minister may in his discretion and under the seal of his office have, use, exercise and enjoy any power, right or authority conferred on the Lieutenant Governor by subsection (1).

(3) Upon the application for a licence issued under this Act, the applicant shall establish to the satisfaction of the Minister, or such officer as may be charged by him to report thereon, that the provisions of this Act and the regulations have been complied with, and the Minister or such officer may, for that or for any other purpose under this Act, take evidence under oath.

(4) There shall be paid for a licence under this Act such fee as is prescribed by the Lieutenant Governor in Council. R.S.O. 1970, c. 280, s. 4.

5. The Lieutenant Governor in Council may make regulations,

- (a) respecting the evidence required upon the application for a licence under this Act as to the incorporation of the corporation, its powers and objects and its existence as a valid and subsisting corporation;
- (b) respecting the appointment and continuance by the corporation of a person as its representative in Ontario on whom service of process, notices or other proceedings may be made, and the powers to be conferred on such representative;
- (c) respecting the limitations and conditions that may be specified in licences;
- (d) respecting the form, duration and extent of licences, and the form of powers of attorney, applications, notices, statements, returns and other documents relating to applications and other proceedings under this Act;
- (e) prescribing the form of the notices mentioned in subsection 2 (2) and of the release and cessation mentioned in subsection 2 (4);
- (f) prescribing fees for licences under this Act. R.S.O. 1970, c. 280, s. 5.

CHARITABLE USES

6. Save as otherwise provided in this Act, every assurance, other than by will, of land or personal estate to be laid out in the purchase of land to or for the benefit of any charitable use is void unless made,

- (a) to take effect in immediate possession for such charitable use;

- (b) without any power of revocation, reservation, condition or provision for the benefit of the assurer or of any person claiming under him; and
- (c) at least six months before the death of the assurator, and if of stock in the public funds by transfer thereof in the public books kept for the transfer of stock at least six months before such death,

provided that the assurance or any instrument forming part of the same transaction may contain all or any of the following conditions, so however that they reserve the same benefits to persons claiming under the assurator as to the assurator himself, namely,

- (d) the grant or reservation of a peppercorn or other nominal rent;
- (e) the grant or reservation of mines or minerals;
- (f) the grant or reservation of any easement;
- (g) covenants or provisions as to the erection, repair, position, or description of buildings, the formation or repair of streets or roads, or as to drainage or nuisances, and covenants or provisions of the like nature for the use and enjoyment as well of the land comprised in the assurance as of any other adjacent or neighbouring land;
- (h) a right of entry on non-payment of any such rent or on breach of any such covenant or provision; or
- (i) any stipulations of the like nature for the benefit of the assurator or of any person claiming under him,

and provided that nothing in this section applies to or affects any such assurance made for full and valuable consideration. R.S.O. 1970, c. 280, s. 6.

Necessity
for sale

7.—(1) Subject to the provisions hereinafter contained, where land is assured otherwise than by will to or for the benefit of any charitable use, the land shall, notwithstanding anything contained in the deed or other instrument of assurance, be sold within two years from the date of the assurance or within such extended period as may be determined by a judge of the Supreme Court.

Idem

(2) If the land is not sold within the two years or within such extended period, it vests forthwith in the Public Trustee and subsection 10 (2) applies thereto.

(3) A judge of the Supreme Court, if satisfied that the land so assured is required for actual occupation for the purposes of the charity and not as an investment, may by order sanction the retention of the land. When sanctioned R.S.O. 1970, c. 280, s. 7.

EXEMPTIONS

8.—(1) In this section,

Interpre-
tation

- (a) “public museum” includes buildings used, or to be used, for the preservation of a collection of paintings or other works of art, or of objects of natural history, or of mechanical, scientific or philosophical inventions, instruments, models or designs, and dedicated or to be dedicated to the recreation of the public, together with any libraries, reading rooms, laboratories and other offices and premises used or to be used in connection therewith;
- (b) “public park” includes any park, garden, or other land dedicated or to be dedicated to the recreation of the public;
- (c) “school” means a school, or department of a school, at which education is given in literature, art, science or mathematics, or a vocational or technical school;
- (d) “schoolhouse” includes the teacher’s dwelling house, the playground, if any, and the offices and premises belonging to or required for a school.

(2) Notwithstanding anything in this Act, land or personal estate to be laid out in the purchase of land, may be assured Assurances for a public park, school, or museum

- (a) for a public park;
- (b) for a public museum;
- (c) for a public library;
- (d) for a school or schoolhouse.

(3) Land assured for the purposes of a school or schoolhouse and not required for actual use and occupation for such purposes or the part thereof not so required shall be sold within two years from the date of the assurance or, in the case of a will, from the death of the testator, or such extended period as may be determined by a judge of the Supreme Court, and the provisions of subsection 10 (2) and of section 12 apply. Sale of land assured for school if not required for actual use R.S.O. 1970, c. 280, s. 8.

Assurances
for certain
purposes

9. Sections 2 and 6 do not apply to,

- (a) an assurance of land or personal estate to be laid out in the purchase of land, to or in trust for any incorporated university, college or school in Ontario, or for the support and maintenance of the students thereat ;
- (b) an assurance, otherwise than by will, to trustees on behalf of any society or body of persons, incorporated or unincorporated, associated together for religious purposes, or for the promotion of education, art, literature, science or other like purposes, of land not exceeding two acres, for the erection thereon of a building for such purposes, or any of them, or whereon a building used or intended to be used for such purposes, or any of them, has been erected. R.S.O. 1970, c. 280, s. 9.

LAND DEVISED BY WILL

Power to
devise land
for charitable
use

10.—(1) Land may be devised by will to or for the benefit of any charitable use, but, except in the cases provided for by sections 8 and 9 and except as otherwise provided herein, shall, notwithstanding anything to the contrary in the will, be sold within two years from the death of the testator, or such extended period as may be determined by a judge of the Supreme Court.

Where land
remains un-
sold after ex-
piration of
two years

(2) So soon as the two years or such extended period have expired without the completion of the sale of the land, the land vests forthwith in the Public Trustee who shall cause the land to be sold with all reasonable speed and after payment of the costs and expenses incurred in or connected with such sale and proceedings shall pay the proceeds to the trustees for the charity. R.S.O. 1970, c. 280, s. 10.

Where land
subject to
life interest

(3) Where a devise, assurance, gift, grant or conveyance referred to in subsections (1) and (2) of this section or in subsection 8 (3) or subsection 13 (3) is subject to a life interest, life annuity or income for life, the two year period referred to in the said provision shall be two years after the life interest, life annuity or income for life ceases to exist. 1972, c. 85, s. 1 (1).

Personal es-
tate directed
to be laid
out in land

11. Any personal estate by will directed to be laid out in the purchase of land to or for the benefit of any charitable use, shall, except as hereinafter provided, be held to or for the benefit of the charitable use as though there had been no direction to lay it out in the purchase of land. R.S.O. 1970, c. 280, s. 11.

12. A judge of the Supreme Court, if satisfied that land devised by will to or for the benefit of any charitable use, or proposed to be purchased out of personal estate by will directed to be laid out in the purchase of land, is required for actual occupation for the purposes of the charity and not as an investment, may by order sanction the retention or acquisition, as the case may be, of such land. R.S.O. 1970, c. 280, s. 12.

GIFTS AND BEQUESTS TO CERTAIN PUBLIC BODIES

13.—(1) The Government of Ontario, a municipal corporation, a school board, a public library board or association, a public hospital board and trustees empowered to administer or hold property for charitable uses may have, take, hold and enjoy by gift, grant, devise, conveyance or bequest real or personal property of any nature or kind and wherever situate, whether within or outside Ontario, or the proceeds thereof upon the terms expressed in the gift, grant, devise, bequest or conveyance whereby the same is given, granted, devised, bequeathed or conveyed to such body.

(2) Any such body may, subject always to the provisions of the Act by or under the authority of which it exists and to any law regulating or limiting its power to contract debts, enter into an agreement for the holding, management, administration or disposition of any such property with the person giving, granting, conveying, devising or bequeathing the same to such public body upon such terms as may be agreed upon between the parties to any such gift, grant, devise, bequest or conveyance.

(3) Land so given, granted, devised, bequeathed or conveyed and not required for actual use and occupation for the purposes of the trust upon which it was given, granted, devised, conveyed or assured to such public body shall be sold within two years from the date of the gift, grant, devise, conveyance or assurance or, in the case of a will, from the death of the testator, or such extended period as may be determined by a judge of the Supreme Court, and the provisions of subsection 10 (2) and of section 12 apply.

(4) This section applies to gifts, grants, devises, bequests and conveyances heretofore made as well as to such as may hereafter be made. R.S.O. 1970, c. 280, s. 13.

SUPPLEMENTAL

14.—(1) In every case of a breach or supposed breach of any trust created for charitable purposes, or whenever the

Power to retain land in certain cases

Power of certain public bodies to accept gifts to charitable uses

Agreement with donor as to administration

Necessity for sale within two years

Retroactive effect of section

Procedure in cases of breach of a charitable trust, etc., or where order necessary for administration

direction or order of a court is deemed necessary for the administration of any trust for charitable purposes, any two or more persons may present a petition to the Supreme Court stating such complaint and praying such relief as the nature of the case may require, and the court may hear the petition in a summary way, and upon such affidavits or such other evidence as is produced upon the hearing, may determine the same, and make such order therein, and with respect to the costs of the application, as seem just, and any order so made is subject to appeal as if made in an action.

Execution of
petition and
certificate by
Attorney
General

(2) Every such petition shall be signed by the persons preferring the same in the presence of and shall be attested by their solicitor, and shall be submitted to and may be allowed by the Attorney General, and such allowance shall be certified by him before any such petition shall be presented. R.S.O. 1970, c. 280, s. 14.

Saving for
existing
licenses, etc.

15. Nothing in this Act applies so as to limit or restrict the right possessed by any corporation under any other Act, or affect any charter or licence in force when this Act comes into force enabling land to be assured or held in mortmain. R.S.O. 1970, c. 280, s. 15.

